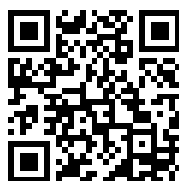

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TREASURY'S TEMPORARY AND PROPOSED REGULATIONS RELATING TO RECORDKEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY

GCS RECORD ONLY:

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

MARCH 5, 1985

Serial 99-11

Printed for the use of the Committee on Ways and Means



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TREASURY'S TEMPORARY AND PROPOSED REGULATIONS RELATING TO RECORDKEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY

TUESDAY, MARCH 5, 1985

**HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
*Washington, DC.***

The committee met, pursuant to call, at 10:30 a.m., in room 1100, Longworth House Office Building, Hon. Dan Rostenkowski (chairman of the committee) presiding.

[The press release announcing the hearing follows:]

[For immediate release, Thursday, Feb. 7, 1985]

THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN, COMMITTEE ON WAYS AND MEANS, ANNOUNCES DETAILS OF A PUBLIC HEARING ON TREASURY'S TEMPORARY AND PROPOSED REGULATIONS RELATING TO RECORD KEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY

The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, U.S. House of Representatives, today announced details of the public hearing on the Treasury Department's revised temporary and proposed regulations relating to the record keeping requirements for automobiles and certain other property. These regulations were originally published in the Federal Register of October 24, 1984, revisions to which are expected any day. The hearing will be held on Tuesday, March 5, 1985, in Room 1100 Longworth House Office Building, the Committee's main hearing room, starting at 9:30 a.m.

In announcing this hearing, Chairman Rostenkowski stated that "considerable controversy has arisen in response to the Treasury Department's proposed regulations implementing the new record keeping requirements for automobiles and other vehicles. The Committee is aware that some taxpayers with legitimate business expenses may be facing unduly burdensome record keeping requirements as a result of the new law, yet it remains concerned with the significant noncompliance under prior law resulting from overstatement of credits and deductions for the business use of automobiles and other property. The Committee intends that this hearing be a forum to fully air both of these concerns."

The Honorable Ron Pearlman, Assistant Secretary for Tax Policy, Department of the Treasury, is expected to be the initial witness.

BACKGROUND

Under prior law, a taxpayer was required to substantiate any claimed deduction for travel expenses, entertainment, recreation, or gifts by adequate records or other evidence. Taxpayers who could reasonably reconstruct these expenses could claim a deduction. These records were required to show the amount, time, place and business purpose of the expenses (Code section 274(d)).

Section 179 of P.L. 98-369, the Deficit Reduction Act of 1984 (the Act) amended prior law to require taxpayers to substantiate, with adequate contemporaneous records, any claimed credit or deduction: (1) with respect to business use of listed property, that is, automobiles, other transportation vehicles, any property generally

used for entertainment, recreation, or amusement, any computer equipment, and any other property specified in regulations; (2) with respect to traveling expenses (including meals and lodging while away from home); (3) for any entertainment, amusement or recreation expense, including use of a facility for such purpose; and (4) for any expense for gifts. These record keeping requirements are effective for taxable years beginning after 1984.

On October 24, 1984, the Treasury Department published temporary regulations implementing section 179 of the Act (49 FR 42701). On January 25, 1985, the Internal Revenue Service announced its intention to issue temporary and proposed regulations modifying the requirement to keep adequate contemporaneous records for automobiles and certain other vehicles (IR 85-6). These revised regulations are expected to be issued any day. The Committee is interested in learning what specific additional burdens associated with the new record keeping requirements remain in light of the revisions to the original temporary regulations. Further, the Committee expects that witnesses will offer suggestions for how the most burdensome requirements might be lessened without ignoring the present law distinction between business expenses, which are deductible, and personal expenses, which are not deductible.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Individuals and organizations interested in presenting oral testimony before the Committee must submit their requests to be heard in writing no later than close of business, Tuesday, February 26, 1985, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth Building, Washington, D.C. 20515. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesman to represent them in order for the Committee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing. This process will afford more time for members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Committee are required to submit 200 copies of their prepared statements to the Committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

Requests to be heard must contain the following information:

1. The name, full address, and capacity in which the witness will appear, as well as a telephone number where the witness or a designated representative may be reached;
2. A list of clients or persons, or any organizations for whom the witness appears; and
3. A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the printed record of the hearing.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies by the close of business, Friday, March 8, 1985, to Joseph K. Dowley, Chief Counsel, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Committee office before the hearing begins.

Chairman ROSTENKOWSKI. The committee will come to order. Good morning ladies and gentlemen. If at all possible, I would like our guests to find seats at this time.

Today, the committee is holding a hearing on the Treasury Department's proposed regulations dealing with recordkeeping requirements for automobiles and certain other property. This is an issue that has struck a raw nerve among many of the taxpaying

public. We on the committee are sensitive to these concerns and, thus, are responding with one of the earliest hearings of this session.

Last year, the House, as part of the Deficit Reduction Act of 1984, included limitations on the amount of depreciation and investment tax credit that could be taken for expensive luxury automobiles. These provisions were dramatically expanded in the Senate, including the contemporaneous recordkeeping requirement which is at issue here today. In the meantime, frustration has redoubled as Treasury regulations were issued and reissued—without setting forth understandable and practical recordkeeping rules.

While we want to make the substantiation requirements as simple as possible, we must be guided by our initial purpose: to assure that deductions claimed are, in fact, legitimate business expenses. Going into the 1984 act, compliance in this area was not particularly high. Many taxpayers were either keeping no records or thought that commuting costs were deductible.

As we begin the long task of tax simplification and reform, we are particularly sensitive to provisions that accomplish neither. I think we should remember our original concern that the law in this area was not being evenly and fairly enforced as we seek to modify its present impact. Repeal obviously satisfies the demand for simplicity. It also raises serious doubts about Congress' resolve in pursuit of reform.

I trust some of our witnesses today will offer constructive suggestions for reaching a formula that balances both simplicity and compliance.

At this time, I want to call on our ranking minority member, Mr. Duncan.

Mr. DUNCAN. I thank you for calling hearings on this very important subject because most of us have received a number of comments from constituents relative to the impact which these new recordkeeping rules will have on the existing business practices.

I think that the hearings will provide a good opportunity for us to explore whether the burdens being imposed by the 1984 legislation as interpreted by the Treasury regulations outweigh the compliance improvements that they were designed to reduce. I look forward to hearing from the many Members of Congress who have expressed an interest in this legislation, and also I will be interested in the testimony from the Treasury representatives.

[Mr. Daub submitted the following opening statement:]

OPENING STATEMENT OF HON. HAL DAUB, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, I share the concern of my colleagues on both sides of the aisle, with respect to the burdensome automobile recordkeeping requirements. Soon after Congress enacted the "adequate contemporaneous record" requirement, my constituents began to make known the difficulties which they faced in complying with the new law. During recent months, there has been nothing less than a public outcry from these people as small businessmen and farmers tackled the recordkeeping burden.

I would compliment the chairman for holding this hearing to examine the scope of the problem. It is incumbent upon this committee to be mindful of the conflicting policy objectives which surround this issue. On one hand, we must insure the integrity of the tax system by requiring audit trail documentation to support taxpayer deductions and credits. On the other hand, we cannot jeopardize that same integrity

of the tax system by creating extensive administrative burdens which are perceived as onerous and mean spirited. I would agree with the chairman, that a proper balance must be reached. Based upon what we have heard to date, the contemporaneous recordkeeping rules for automobiles have clearly exceeded that balance. While paved with good intent from a philosophical standpoint, contemporaneous recordkeeping in its purest sense is a dead end street. The question before us today is simply whether the Treasury's proposed regulations have sufficiently modified the recordkeeping requirements. If not, Congress seems to be compelled to take some action in an expeditious manner to remedy this situation.

Chairman ROSTENKOWSKI. As pointed out by Mr. Duncan, many Members of Congress are scheduled to testify today. I suggest to those Members who will testify that they kindly restrict their oral testimony to 5 minutes. However, if, Members would like to insert a longer statement in the record, that is certainly permissible.

Mr. Anthony, welcome to the committee. I am sure you will share great knowledge with us as to the input that you have received from constituents in your congressional district regarding the provisions passed last year and the Treasury Department's regulations.

STATEMENT OF HON. BERYL ANTHONY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ANTHONY. I would like to have my full testimony submitted for the record.

If anyone has not seen the 57-page document issued on Monday, January 7, I certainly encourage them to do so. After you look at these proposed regulations it will be clear why there is such a public outcry over this particular requirement.

Prior to the change of the 1984 law, section 274 required that taxpayers keep adequate records or have corroborative evidence of the expense involved. Now, however, under section 179(b) of the Deficit Reduction Act, the user of an automobile must have a separate entry in a log, specifying when the vehicle is used. In addition, the user must specify: First, the date of use of the property; second, the name of the user of the property; third, the number of the miles; and, fourth, the purpose of the use of the property.

The section also requires preparers of tax returns to notify the taxpayers of the new requirements and obtain written confirmation from each taxpayer certifying that adequate records were maintained. If the taxpayer fails to follow these requirements, he would be subject to a \$25 fine.

Mr. Chairman, I must confess that I was caught off guard when the letters and telephone calls came pouring in. However, after reviewing the original regulations, it was easy to see why there was such public outrage. It is just that kind of requirement that creates public contempt for the IRS and Government in general.

On January 21, along with a number of the members of the Ways and Means Committee, I introduced legislation to repeal section 179(b). This bill, H.R. 531, now has over 126 cosponsors, including 18 members of this committee. Since the introduction of this measure, the IRS has issued a set of regulations. The new proposal, while vastly superior to the first, simply carves out narrow exemptions to the requirements and, if anything, is more confusing and arbitrary than the original proposal.

For example, if a man lives on a farm and also works in a factory, he has a pickup in which he hauls hay to feed three or four cows, what kind of travel is he supposed to log in for the IRS when he goes to the general store to buy both hay and groceries? This would be typical in a rural district like I represent.

What kind of travel is supposed to be logged into the IRS in the case of the surgeon who is supposed to take time to log in his mileage to a hospital emergency room before he cares for a critically injured person?

Or if an attorney is asked a legal question during a private lunch in a restaurant, can he claim his drive to and from the restaurant was for business purposes?

Farmers in my district will either have to accept the 80-20 percent formula or keep a log book. Undoubtedly, my farmers will take the 80 percent, even if they use these vehicles 90 percent of the time for their business. The overall hassle and increased paperwork adhering to these provisions will aggravate these people to the point where they will not take advantage of the credit or deduction to which they are entitled.

There was virtually no debate in either the House or Senate about contemporaneous recordkeeping. The debate focused on the luxury car provisions, and I just can't believe it was the intention of most Members to force these new requirements on farmers and small businessmen. Mr. Chairman, you asked for suggestions for how the most burdensome requirements might be lessened. My suggestion is to repeal these contemporaneous recordkeeping provisions and go back to the original section 274 requirement of adequate records and corroborating evidence. I believe the IRS can strengthen our compliance capabilities if stricter guidelines to section 274 are adhered to, but with the footnote here not to go back to 274 and then say we are going to use contemporaneous records as a way of compliance.

Another problem, Mr. Chairman, relates to public safety employee vehicles are not included in this exclusion. This would result in State troopers, sheriff's deputies, firemen, and emergency medical personnel being taxed on a portion of the use of their vehicle. I do not consider these people to ever be off duty. In most cases, they are on call 24 hours a day, and, when they do travel, they are protecting the safety of our citizens. In order to address this problem, I introduced H.R. 773. This bill provides a fringe benefit exclusion for any use of a public safety vehicle.

I would like to close with a few paragraphs from the transmittal letter of the "Final Report" of the Paperwork Commission. Mr. Chairman and members of the committee, I think this adequately summarizes the complete outrage that I have heard from my constituents and what drives me to want to come to testify today.

The theme we heard repeatedly throughout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However these people can be frustrated by a government which, in their view, does not trust them. Many people feel, and the Commission agrees, that a multibillion dollar wall of paperwork has been erected between the Government and the people. Countless reporting and recordkeeping requirements and other heavyhanded investigation in monitoring schemes have been instituted, based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored, and re-

checked. This situation in this assumption must be reversed if we are to restore efficiency within Government and confidence in Government by the people, and if we are to realize the potential for cooperative attainment of our goals as a Nation.

Mr. Chairman, I believe we can take the first step in restoring this confidence by repealing these pernicious and onerous record-keeping requirements.

[The prepared statement follows:]

STATEMENT OF HON. BERYL ANTHONY, JR., A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF ARKANSAS

Mr. Chairman, I appreciate the opportunity to appear before the Ways and Means Committee today to speak on the newly revised automobile record-keeping requirements. Most small businessmen and farmers will consider this the second Ways and Means Committee hearing on tax simplification. The type of regulations recently proposed by the Internal Revenue Service is one of the main reasons the Ways and Means Committee is going to spend this year discussing tax simplification and tax reform. If anyone has not seen the 57-page document issued by the I.R.S., I wish you would take the time to look it over. It will become clear why there is such a public outcry over this requirement.

As the Committee is aware, the Tax Reform Act of 1984 made several changes in depreciating and expensing the costs associated with the business use of an automobile and other personal use property. These changes were based mainly on newspaper advertisements promoting how much a person could save on his or her taxes by purchasing a luxury car. During the drafting of legislation to deal with this problem, new substantiation requirements under Section 274 of the Internal Revenue Code were developed. Prior to this change, Section 274 required that taxpayers keep adequate records or have corroborating evidence of the expense involved. Now, however, under Section 179(b) of the Deficit Reduction Act, the user of an automobile must have a separate entry in a log, specifying each time the vehicle is used. In addition, the user must specify: (1) the date of use of the property, (2) the name of the user of the property, (3) the number of miles, and (4) the purpose of the use of the property. The section also requires preparers of tax returns to notify the taxpayer of the new requirements and obtain written confirmation from each taxpayer certifying that adequate records were maintained. If the taxpayer fails to follow these requirements, he would be subject to a \$25 fine.

I must confess that I was caught off guard when the letters and telephone calls came pouring in. However, after reviewing the original regulations, it was easy to see why there was such public outrage. These regulations are obviously overly burdensome, unnecessary and counterproductive—and is just the kind of requirement that creates public contempt for the I.R.S. and government in general.

On January 21, along with a number of members of the Ways and Means Committee, I introduced legislation to repeal Section 179(b). This bill, H.R. 531, now has over 126 cosponsors, including 17 members of this committee. Since the introduction of this measure, the I.R.S. has issued a new set of regulations. The new proposal, while vastly superior to the first, simply carves out narrow exemptions to the requirements and, if anything, is more confusing and arbitrary than the original proposal.

For example, if a man lives on a farm and also works in a factory, and he has a pick-up in which he hauls hay to feed three or four cows, what kind of travel is he supposed to log in for the I.R.S. when he goes to the general store to buy both hay and groceries. Is a surgeon supposed to take time to log in his mileage to a hospital emergency room before he cares for a critically injured person? If an attorney is asked a legal question by a potential client during a private lunch in a restaurant, can he claim that his drive to and from the restaurant was for business purposes?

Farmers in my district will either have to accept the 80-20 formula or have to keep a log book. Undoubtedly, my farmers will take the 80%, even if they use these vehicles 90% of the time for their business. The overall hassle and increased paperwork of adhering to these provisions will aggravate these people to the point where they will not take advantage of the credit or deduction to which they are entitled.

There was virtually no debate in either the House or the Senate about contemporaneous record-keeping. The debate focused on the luxury car provisions, and I just can't believe it was the intention of most Members to force these new requirements on farmers and small businessmen. Mr. Chairman, you asked for suggestions for how the most burdensome requirements might be lessened. My suggestion is to

repeal these contemporaneous record-keeping provisions and go back to the original Section 274 requirement of adequate records and corroborating evidence. I believe the I.R.S. can strengthen our compliance capabilities if stricter guidelines to Section 274 are adhered to.

Another problem, Mr. Chairman, which is related to this issue, is in the area of fringe benefits. Under new Section 132, many existing fringe benefits were codified. Several exclusions were put into the statute, including a "working condition" exclusion. Unfortunately, as interpreted by the I.R.S., public safety employee vehicles are not included in this exclusion. This will result in state troopers, sheriff's deputies, firemen, and emergency medical personnel being taxed on a portion of the use of their vehicle. I do not consider these people to ever be off duty. In most cases, they are on call 24-hours-a-day, and when they do travel, they are protecting the safety of our citizens. In order to address this problem, I introduced H.R. 773. This bill provides a fringe benefit exclusion for any use of a public safety vehicle. It seems ridiculous to have a law enforcement officer keep a log book the minute his particular shift ends.

I know there are many witnesses here today, Mr. Chairman, and I don't want to take up anymore time than necessary. I would just like to close with a few paragraphs from the transmittal letter of the Final Report of the Paperwork Commission:

"The theme we heard repeatedly throughout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However, these people can be frustrated by a government which, in their view, does not trust them. . . . Many people feel, and the Commission agrees, that a multibillion dollar wall of paperwork has been erected between the government and the people. Countless reporting and record-keeping requirements and other heavyhanded investigation and monitoring schemes have been instituted, based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored, and rechecked. . . . This situation and this assumption must be reversed if we are to restore efficiency within Government and confidence in Government by the people, and if we are to realize the potential for cooperative attainment of our goals as a Nation."

I believe we can take the first step in restoring this confidence today by repealing these pernicious and onerous record-keeping requirements.

Chairman ROSTENKOWSKI. Thank you, Mr. Anthony.

Are there any questions?

Congressman Wes Watkins.

Welcome to the committee, Wes. The committee is ready to receive your testimony, if you would like to begin.

STATEMENT OF HON. WES WATKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. WATKINS. Thank you, Mr. Chairman.

I would like to pay recognition and give due credit to this committee for not having created a merger with this particular language. I think most of us recognize it came from the other body during the wee hours of the morning, so I give you credit for not bringing this language forth in the wee hours of the morning when most eyes were, in the limbo sense, on expensive vehicles. The words "contemporaneous recordkeeping requirement" emerged from that meeting, and now we are having to work with it and live with it presently.

But I come before you, Mr. Chairman, and members of the committee, to ask you to repeal this particular phrase in the language because I know from what I have received from my district, numerous cards and letters, that this is going to touch every single business in the area. The question is, as my friend from Arkansas stated, how do you in many of these areas break down what is business and what is actually personal, in the case of a worker in an oil

patch, in many cases picking up other things, and also many of the field hands working on the ranches in the cattle business as well as farms?

It is an overburden requirement, and I think most of us would like to see us go back to this other area. It has been estimated it will cost the American people \$7 to \$8 billion to fulfill the requirement and maybe be able to gain slightly over \$100 million for the Treasury. I think we can see that this is going in the wrong direction.

It is not like the withholding after interest provision where the banks help generate a great deal of those cards and letters in a very or orchestrated way. The cards and letters I have received have come from all facets of business and all facets of agriculture, small business as well as large. So it has not been an orchestrated one, but one that has been a ground swell from the grassroots.

Mr. Chairman, I appreciate your holding these hearings. I know that all of you will be working for the right decision, and I hope that first step is the repeal letter. Thank you, Mr. Chairman, for allowing me to come by. I know you have a lot of other witnesses so I don't want to take up too much time.

Chairman ROSTENKOWSKI. Thank you, Wes. Are there any questions? If not; we thank you.

The Chair calls Congressman Luken.

Welcome to the committee, Tom. The committee is ready to receive your testimony. You may proceed.

STATEMENT OF HON. THOMAS A. LUKEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND CHAIRMAN, SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, COMMITTEE ON SMALL BUSINESS

Mr. LUKEN. Mr. Chairman, members of the committee, you may be aware that the CBS Morning News took note of this subject with extensive coverage this morning. This is an indication of the tremendous concern that there is on this issue. As CBS pointed out, there is a grassroots reaction to this particular legislation and it is legislation.

As a result of that, and its application to small business, our Small Business Committee on Taxation held hearings a couple of weeks ago, and we heard from the chamber of commerce. We heard from fire and police officials—those involved in emergency work about the variety of problems that arise from this legislation. I think that the changes in regulations have not solved the problem. As a matter of fact, it may compound it in some areas.

I think that this committee ought to report legislation to the Congress which repeals the adequate and contemporaneous record-keeping requirement. I think this was well-motivated legislation but it is counterproductive. It gives the evader—and that is the problem, we all admit—the person who wants to evade, it gives that person a road map as to how to evade. On the other hand, those who are less sophisticated, who are not seeking ways to evade will be penalized at the end of the year. The howl and cry that has been raised up to now will be nothing compared to that which will

occur in 1986 when our taxpayers are forced to fill out their returns and find out that they must invent records. Incidentally, this will be applying to many Members of Congress, and we have talked to Members of Congress, and many Members are not aware that on cars they lease, for example, Government leases for automobiles that they use, that these provisions apply to them. So I think we are all in the same boat. I don't mean that Members of Congress are going to be evaders but they are going to be penalized at the end of the year for something they don't realize will hit them. They will have to pay even though these deductions would be legitimate.

So the outcry from our constituents has been long and loud, and I think in concluding this brief presentation, because I don't wish to impose upon the time of the members of the committee, I would emphasize that there was nothing wrong with the previous standard. There was absolutely nothing wrong with the previous standard.

So, if this committee recommends repeal and repeal of this offensive provision occurs, we will go back to the reasonable reporting requirements which were enforceable by the IRS. This requirement will not be enforceable and those who want to evade realize it is not enforceable, and that is why it gives them a road map, it gives them actual directions as to how to evade. We don't want to force the American taxpayer either to be an evader, in effect, a criminal, or by being unsophisticated to pay unnecessary, unjustified taxes.

I thank the members of the committee.

[The prepared statement and attachment follow:]

**STATEMENT OF HON. THOMAS A. LUKEN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OHIO**

I am pleased to have the opportunity today to discuss the issue of "contemporaneous record-keeping" and to share with you information which the Small Business Committee has obtained over the past couple of months. These hearings constitute the first comprehensive examination of the issue of the contemporaneous record-keeping provision which was added to last year's deficit reduction act by the Senate.

It is doubtful that anyone predicted that this provision, of the numerous changes made by the Deficit Reduction Act, would generate the kind of spontaneous, angry reaction from the public that we have experienced. The response from our constituents has been truly a grass-roots reaction, and largely a self-generated one. Most of the correspondence I've received is individually written, and shows very specific paperwork and cost burdens imposed on people by this record-keeping. If your experience has been similar to mine when I scheduled a hearing on this subject, you have received more requests from associations and individuals to testify than you can accommodate. One of the reasons for that is the tremendous pressure being exerted on associations by their membership to demonstrate that they are doing everything possible to eliminate the new regulations.

I'm persuaded that his taxpayer revolt against paperwork will only get stronger if we fail to act expeditiously to return the law to the way it was prior to June, 1984. We have only heard from those taxpayers who are aware that the provision affects them. Just wait until those who don't know about the law start filling out their 1985 tax returns and discover they'll lost legitimate business deductions because their records are not "contemporaneous". Clearly there is a great portion of the public still unaware of the law. One of the largest small business groups testified before the Small Business Committee that only 25 percent of its membership used accountants. We can be certain that there are many of those people who don't even know what's in store for them—and those are the joiners, who are likely to be the best-informed.

The only way out of this predicament is to return to the law as it existed prior to June, 1985. The law then would deny deductions unless the taxpayer could substantiate them by "adequate records or by sufficient evidence corroborating his own state-

ment" . . . That is not a lax standard, but merely allows a taxpayer to prove his or her case if adequate records are not kept. It does not set up a standard so rigid that all evidence except the logs would be discounted. It could allow the use of an appointment calendar, or sales reports to support a claim for a deduction. The old standard is, in effect, a "rule of reason" and would not automatically throw out evidence that is not truly contemporaneous. As a tax accountant told our Small Business Committee "If there was abuse under prior law, it was not the result of deficiency in statutory language".

Testimony at our small business hearings revealed that there could be enormous costs imposed on small business by these regulations, with most of that cost being passed on to the consumer. One conservative estimate put the national cost at \$7 billion, for a very minor revenue gain of just over \$100 million. One small electronics firm estimated its loss at \$81,000 per year. I must say that many of us on the Small Business Committee are now being asked just what good that Paperwork Reduction Act has done.

In an effort to respond to the outpouring of criticism of its regulations implementing the record-keeping provisions of the Deficit Reduction Act, the Internal Revenue Service has recently issued yet another set of proposed regulations. I will agree that this latest set of regulations ameliorates some of the problems which resulted from the initial regulations issued back in October, 1984. Permitting a taxpayer to make an entry at the beginning and end of a period of uninterrupted business use rather than at each stop is helpful, and will eliminate paperwork for some taxpayers. But I have several criticisms of the new regulations both for broad policy reasons and in some specifics. We must realize that the American taxpayer is supposed to have been meeting the requirements of this law since January 1, 1985. Those Americans who have been attempting to comply with the stops and starts on these regulations must have run up some hefty bills with their accountants—if not their psychiatrists. Let's look at the recent regulatory history:

1. October 24, 1984—IRS issues temporary regulations on substantiation
2. January 7, 1985—IRS issues temporary regulations regarding taxation of fringe benefits
3. January 25, 1985—IRS issues press release announcing changes in regulations and promises to publish them "next week"
4. February 2, 1985—IRS publishes temporary regulations and notice of proposed rulemaking for both substantiation through adequate contemporaneous recordkeeping and for fringe benefits.

It is obvious that the agency has had some difficulty in devising regulations that will accomplish enforcement goals without causing unreasonable burdens on honest taxpayers. Is it any wonder that one of the witnesses before my subcommittee, who happened to be an accountant, said the regulations were "difficult to comply with" and that it was hard to know what was going on? It is only reasonable for Congress to take a good, hard look at this section of the law and go back to the drawing board by rescinding our error of last year. Let's not continue to leave millions of our citizens in a state of tax-reporting limbo and use them as guinea pigs while the bureaucrats try to remedy something that can only be done through legislation.

The results of the latest IRS efforts to fix the infirmities in the regulations show why we must return the law to where it was previously. It appears that the service attempting to repair the damage that was being done to each group complaining about how the regulations affected its members. Rather than applying a fair and reasonable rule across the board, the service has taken the approach of saying, "Well, group A can assume 70 percent use if its members meet certain requirements, and group B can assume 80 percent business use under different circumstances." That approach just won't wash with the American people. It is inherently unfair and inequitable, and will by its very nature require some people to fill out logs while others don't have to. Although it may seem hard to believe because of the large numbers of associations who are talking to us about this issue, there are some interests who don't have Washington representation, and they are the ones likely to be left out of consideration by the Service.

A closer look at some of the revisions of the regulations that at first glance appear to offer some needed relief will reveal that an equitable solution has yet to be found short of legislative repeal. The revision which appears to affect the most people would allow a person who spends most of the day out of the office making several stops to take a deduction or credit "as if" the business use were 80 percent in a commercial vehicle or 70 percent if in another vehicle. The problem with this provision is that the percentages do not reflect actual business usage. I am aware of no surveys done by IRS to ascertain if these percentages are correct. Besides that objection, I return to the point I was making earlier about the inherent unfairness in

making this kind of distinction between taxpayers. Doesn't this "safe harbor" really let off the hook anyone who is out of the office most of the day but who uses the automobile less than 70 percent for business? On the one hand, it gives away something that the current standards would not, and on the other hand, it doesn't offer relief from this burden for those who most need it.

Another infirmity with this proposal is the exception that denies the use of a safe harbor to those who spend the bulk of their time in the office. This would require extensive record-keeping for those who do spend the bulk of their time in the office, but nevertheless do a lot of driving for business. This would include people in the professions, as well as many small business owners who may spend much time in the office but need to make a larger number of calls on banks, job sites, and suppliers as well as customers.

The farm community will not be mollified by similar provisions which affect its members. I'm from the city, but I would doubt that there would be many vehicles on farms that are used only 70 percent for business. So, again, what appears to be an offer of some relief from these onerous regulations turns out to be little help. Further making the exception less available to the farmer is an additional requirement that the exception applies only to those whose gross income comes from farming. During a period in time when farmers must take other jobs just to stay afloat, that qualification will result in many farmers being denied the use of a safe harbor.

I am hopeful that the response from the IRS or the Congress will not be to simply increase the percentage of the safe harbors, or add a new category of taxpayer who can qualify for a safe harbor. That is simply not good tax policy.

Another series of problems were raised by our hearings relating to fringe benefits and the attendant need to substantiate personal use for imputing income purposes. The problems caused by such a provision of law were best highlighted by the testimony we received from representatives of the International Association of Police Chiefs and International Association of Fire Chiefs. They stated that there would be a danger to health and safety if income were to be imputed for commuting by officers and firemen who are required to do so by their employers for obvious public safety purposes. The valuation of commuting, even if lowered to \$3.00 per day is a disincentive for people to take these vehicles home. If policies do change, and policeman no longer take the automobiles home, there will be a loss in public safety where such cars are a deterrent to crime. Volunteer firefighters, who are paid mostly as part-time employees, will have a real disincentive if they have to record their "business use" each time they go out to fight a fire at 3 am, even if the definition of contemporaneous would allow them to write down their mileage upon return.

Similar problems relating to the imputed income from commuting would affect other people as well. Many plumbers, electricians, and utility repair people take vehicles home for emergency purposes. This is certainly done for the benefit of the employer, not the employee. Should the workers be penalized? Is that really what Congress intended?

The result of the changes in the law with regard to record-keeping made by the deficit reduction act are quite large. Businesses are already making decisions based on the tax consequences of how their vehicles are used. Some companies are already giving up the use of company automobiles and requiring employees to use theirs. Some will have to consider storing vehicles at the plant or other business location if they have the room. The consequences of this provision are great, and not fully known as yet. At a time in which all of us are urging a simplification of the Tax Code which would lead to decisions being made on the basis of sound business judgement, this regulatory approach is a mistake. As our witness from the chamber of commerce said, we won't even know the total impact of these regulations for 2-3 years when people start having audits. From all the evidence I've seen to date, there is little to be gained, and much to be lost from continued use of the "adequate contemporaneous recordkeeping" standard.

I am submitting for the record a statement from a large number of our colleagues urging the committee to act to repeal this provision. I hope you can move expeditiously to deal with this mistake.

Thank you for your attention.

STATEMENT—MARCH 5, 1985

We urge the Committee on Ways and Means to report legislation to repeal the "adequate contemporaneous" record-keeping requirement that was added to section 274(d) of the Internal Revenue Code during the Conference on the Deficit Reduction Act of 1984.

The outcry from our constituents (who are aware of the requirement) has been as loud and prolonged as on any tax issue, louder even than the protest over withholding on dividends and interest. The complaints are coming from a wide range of auto-users, from the part-time individual sales person trying to make ends meet, to the fleet owners, the largest companies. The protests about the burdens of this record-keeping are not limited to the small numbers of people who may have been abusing the tax code, but are from a true cross-section of the American public.

At the Small Business Committee hearing on February 8, 1985 there were more than 20 witnesses who told the panel of the loss of productivity suffered as a result of the onerous record-keeping requirement. It is conservatively estimated that the cost to the consumer is at least \$7 billion! That is an incredible price to pay for the relatively miniscule gain in revenue estimated at slightly more than \$100 million for the Treasury. Representatives of the International Association of Fire Chiefs and the International Association of Police Chiefs testified that the vital life-saving services performed by part-time volunteers will be discouraged by these burdens.

The revised regulations issued by the Internal Revenue Service do not eliminate the deficiencies inherent in the "contemporaneous standards." The Service has attempted to choose among different groups in the taxpaying public and set standards for substantiation accordingly. This is a hit and miss approach that is guaranteed to result in inequities. A reasonable standard, such as existed prior to passage of the Deficit Reduction Act, should be made to apply across the board, treating taxpayers equally. Such a standard should allow for the use of reason, and not straight-jacket the taxpayer into a particular method of substantiating his or her deduction, such as through a requirement that logs be kept. A taxpayer should not be denied a legitimate deduction for a business expense merely for failing to fill out a log if the expenditure can be proven to be for business by other means.

A majority of the Members of Congress have now cosponsored repeal legislation. We urge the Committee to act expeditiously on the issue to end the confusion that exists among people trying to comply with regulations which have been altered since their inception just January 1st, and which face further alteration either through legislation or following the current public comment period. Thank you for your assistance.

Buddy Roemer, Frank Horton, Austin J. Murphy, Esteban Edward Torres, William M. Hendon, Nancy L. Johnson, Frank R. Wolf, Joe Kolter, Thomas A. Luken, Charles Rose, Henry J. Nowak, Richard C. Shelby, Harris W. Fawell, Don Sundquist, Ken Kramer, and Toby Roth.

Rod Chandler, Joe Barton, Vin Weber, Barbara Boxer, Bill Emerson, Nicholas Mavroules, Tony Coelho, Thomas J. Ridge, Sherwood L. Boehlert, Bill McCollum, Arlan Stangeland, Dennis M. Hertel, E. Clay Shaw, Jr., John Bryant, Richard Ray, Robert Lindsay Thomas, Michael D. Barnes, Richard K. Arney, Sonny Callahan, Jim Lightfoot, Hank Brown, and Howard Coble.

Michael L. Strang, James V. Hansen, Robert W. Davis, Ron Wyden, Bill Clinger, Solomon Otiz, Larry Combest, Ralph M. Hall, Richard H. Stallings, Larry Smith, William Carney, Beau Boulter, Sid Morrison, Edward Feighan, Mike DeWine, Howard Wolpe, Dean A. Gallo, Steve Bartlett, Charles Pashayan, Jr., and Webb Franklin.

David Dreier, Ben Erdreich, Ron Packard, Thomas F. Hartnett, Tom Bliley, Sonny Montgomery, Charles Wilson, Wes Watkins, Philip R. Sharp, Bob Traxler, Barbara F. Vucanovich, Dave McCurdy, Bill Hughes, Billy Tauzin, Walter B. Jones, John Breaux, George Miller, Don Ritter, Doug Applegate, and George (Buddy) Darden.

Tom Lewis, Jim Olin, Beverly B. Byron, George W. Gekas, Doug Bereuter, Dan Young, Ron de Lugo, Claude Pepper, Virginia Smith, Timothy J. Penny, Tom Loeffler, John McCain, William O. Lipinski, G. William Whitehurst, Thomas N. Kindness, Norman F. Lent, Parren J. Mitchell, Don Fuqua, Carroll Hubbard, and John E. Grotberg.

Ed Jones, Nick J. Rahall, II, Marvin Leath, Earl Hutto, Benjamin A. Gilman, David Obey, Charles W. Stenholm, Marjorie S. Holt, Harold L. Volkmer, Gene Taylor, Connie Mack, Robert C. Smith, Ron Marlenee, Les AuCoin, W.G. (Bill) Hefner, James J. Howard, Fred J. Eckert, Bob Carr, Pat Williams, and Dan Daniel.

Joseph M. McDade, Hamilton Fish, Jr., Robert S. Walker, Robert E. Badham, Bob Livingston, Ben Blaz, John D. Dingell, Sam Gejdenson, Howard C. Nielson, John Edward Porter, Andy Ireland, F. James Sensenbrenner, Jr., Glenn English, E. Thomas Coleman, George M.

O'Brien, William E. Dannemeyer, Thomas D. DeLay, John R. McKernan, Jr., Carl C. Perkins, and Joe Skeen.

Wayne Dewdy, Richard J. Durbin, Thomas A. Daschle, Bobbi Fiedler, John Paul Hammerschmidt, Charles Hatcher, Carlos J. Moorhead, James A. Traficant, Jr., Gus Savage, Paul E. Kanjorski, Jim Saxton, Robert K. Dornan, Joseph J. DioGuardi, Berkley Bedell, Bob Whittaker, Jack Fields, Dan Mica, Denny Smith, Bill Richardson, Tom Lantos, J. Roy Rewland, Robin Tallon, Terry L. Bruce, and Stephen L. Neal.

Chairman ROSTENKOWSKI. Thank you, Tom.

Are there any questions of Congressman Luken? If not, thank you very much.

The Chair calls Congressman Bliley.

Mr. BLILEY. Thank you, Mr. Chairman.

Chairman ROSTENKOWSKI. Welcome to the committee. The committee is ready to receive your testimony.

Mr. BLILEY. I appreciate your allowing me this opportunity to come before you today to testify on the contemporaneous record-keeping requirements of last year's tax bill. I intend to keep my statement brief. In order to do so, I would ask permission to submit for the committee's record a copy of my statement.

Chairman ROSTENKOWSKI. Without objection, your entire statement will be included in the record.

STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Mr. Chairman, I would like to make five simple points about the contemporaneous recordkeeping requirements.

First, I have been unable to isolate the exact amount of revenue the committee hopes to gain from these new requirements. The revenue estimates of the Joint Committee on Taxation lump several tax provisions together for \$150 million and \$233 million in revenue gains for fiscal years 1985 and 1986, respectively. But it is unclear what portion of these revenues will come from these rules. The committee might do well to inspect how much revenue is being lost because people are spending time filling out reams of paper when they could be using that time to earn more money and generate more money for the Treasury.

Second, I believe it is the task of Congress to revise or repeal a law which Congress has passed. While I am heartened the IRS tried to make their new regulations in this area more livable, the IRS may have overstepped its bounds in seeking to accommodate the concerns of the public in order to keep its rules substantially intact. Whatever the will of Congress, it should be fully articulated for the IRS to implement.

Third, I think the revisions that the IRS made recently are beyond the ken of the average taxpayer. Joe and Martha Six-pack should not have to hold degrees in accounting just to be able to file their tax forms properly. Beyond this, the IRS's revisions leave unanswered several important questions. The IRS does not adequately define what constitutes "sales and services"; nor does the IRS effort to accommodate farmers include automobiles used in the business of farming.

But, most importantly, the IRS's efforts to accommodate the public and so keep these rules on the books will have the effect of

encouraging the very activity it was meant to stop. The legitimate heavy use of an automobile will have to be accounted for, while the taxpayer who wants to pad his account will be eligible for an almost automatic writeoff.

This brings me to my last point, Mr. Chairman, which is that I think the provisions of last year's tax bill requiring contemporaneous records should be repealed. A huge number of our colleagues share this sentiment. As an original cosponsor of H.R. 600 with my colleague Buddy Roemer and over 100 other Members, I would like to say that I think we can do better.

The problem that this law tried to attack is still with us, and I admit repealing that law will not help. But it will give us a clean slate to work from, and it will tell the IRS to try to give up on trying every possible permutation to save this law.

Again, thank you for giving me this opportunity. I appreciate your giving me the chance to come to tell you what my constituents are saying about contemporaneous recordkeeping.

[The prepared statement and attachment follow.]

STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF VIRGINIA

Mr. Chairman, Members of the Committee, I appreciate your allowing me the opportunity to come before you today to testify on the contemporaneous record-keeping requirements of last year's Deficit Reduction Tax Act. I intend to keep my statement brief, and to do so, I would ask permission to submit for the Committee's record a copy of my statement of February 8 on this same topic before the House Small Business Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business.

Mr. Chairman, I would like to make five simple points about the contemporaneous record-keeping requirements. First, I have been unable to isolate the exact amount of revenue which the Committee hopes to gain from these new requirements. The revenue estimates of the Joint Committee on Taxation lump several tax provisions together for \$150 million and \$233 million revenue gains in Fiscal 1985 and 1986 respectively, but it is unclear what portion of these revenues will come from these rules. The Committee might do well to inspect how much revenue is being lost because people are spending time filing out reams of paper when they could be using that time to earn more money and generate new revenues for the Treasury.

Second, I believe it is the task of Congress to revise or repeal a law which Congress has passed. While I'm heartened that the IRS tried to make their new regulations in this area more liveable, the IRS may have overstepped its bounds in seeking to accommodate the concerns of the public in order to keep its rules substantially intact. Whatever the will of the Congress, it should be fully articulated for the IRS to implement.

Third, I think the revisions that the IRS made recently are beyond the ken of the average taxpayer. Joe and Martha Six-pack should not have to hold degrees in accounting just to be able to file their taxes properly. Beyond this, the IRS's revisions leave unanswered several important questions. The IRS does not adequately define what constitutes "sales and services"; nor does the IRS effort to accommodate farmers include automobiles used in the business of farming.

But most importantly, the IRS's efforts to accommodate the public and so keep these rules on the books will have the effect of encouraging the very activity it was meant to stop. The legitimate heavy use of an auto will still have to be accounted for, while the taxpayer who wants to pad his account will be eligible for an almost automatic write-off.

This all brings me to my last point, Mr. Chairman, which is that I think the provisions of last year's tax bill which require contemporaneous record-keeping should be repealed. A huge number of our colleagues share this sentiment. As an original cosponsor of H.R. 600 with my colleague Buddy Roemer and over 100 other Members, I would like to say that I think we can do better.

The problem that this law tried to attack is still with us. And I admit that repealing that law will not help. But it will give us a clean slate to work from, and it will tell the IRS to give up on trying possible permutation to save this law.

Again, Mr. Chairman, thank you for giving me this opportunity. I appreciate your giving me the chance to come tell you what my constituents are saying about contemporaneous record-keeping.

STATEMENT OF HON. THOMAS J. BLILEY, JR., BEFORE THE SUBCOMMITTEE ON ANTI-TRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, U.S. HOUSE OF REPRESENTATIVES, REGARDING REPEAL OF CONTEMPORANEOUS RECORD-KEEPING SUBSTANTIATION REQUIREMENTS FOR TAX PURPOSES

Mr. Chairman, Members of the Committee, thank you for giving me the opportunity to come before you today. The subject of this hearing—the effect of the recently-enacted contemporaneous record-keeping requirements of the 1984 Deficit Reduction Tax Act on small business men and women—is a matter of great concern to the millions of Americans who routinely use their automobiles in the course of conducting business. I'm confident that as knowledge of these new requirements grows throughout the country, so will the groundswell of opposition to these burdensome new regulations.

I think it is particularly commendable, Mr. Chairman, that you have seen this opposition movement as it is materializing at its earliest stages. Members of Congress who are concerned about the new law sincerely appreciate your creating a forum for our grievances to be aired.

I would also like to note the fine work of the gentleman from Louisiana, Representative Roemer, a Member of the Committee, with whom I've worked to publicize the problems with these new rules and whom I've joined in sponsoring H.R. 600, the "Taxpayer Relief Act of 1985." Mr. Roemer and other Members who have introduced legislation on this subject deserve special recognition for their efforts.

Mr. Chairman, prior to passage of the 1984 Deficit Reduction Tax Act, taxpayers who wanted to claim standards business deductions for the use of automobiles in their vocations were required to keep "adequate" records with sufficient evidence to justify these business use deductions. These rules applied not only to cars but also to other property used in business and for personal or family use. Under the prior law, business men and women could keep weekly logs or even reconstruct their logs later as long as they could still prove proper business use.

While these rules were far from perfect, the new rules go beyond the bounds of reason in correcting the problem.

Contemporaneous record-keeping—requiring taxpayers to keep a log at the actual time of each use—have been particularly burdensome to some members of our economy like farmers, who routinely use their trucks interchangeably for business and personal use, and just plain onerous on every one else. I think that at a time when farmers have to worry about the cost of keeping their lands and about how they are going to get loans for spring planting with interest rates at their current levels, this new law telling them that they will have to spend this much time and produce absolutely nothing but paper is a real slap in the face.

Mr. Chairman, beyond the questions of whether or not the new contemporaneous record-keeping requirements go overboard and hurt small business, there are other points your Committee should consider. First, we have no specific and accurate revenue estimates that I'm aware of to tell us whether or not these new requirements will actually generate any new revenues. The last time I looked for such estimates, I found that only the Joint Committee on Taxation has produced such numbers. But the JTC's estimates also include other related provisions of last year's tax bill, such as depreciation limits on the use of luxury cars. I cannot tell how much of the estimated \$150 million and \$233 million in fiscal years 1985 and 1986, respectively, is derived from each of the many sources that the JTC has lumped together in coming up with these estimates. I would hope that the Committee would research this carefully. I think you will find that increasing the paperwork that a small business man or woman has to fill out will not necessarily result in any greater revenue to the Treasury. As long as the claim is an honest one—which I believe most are—the same deductions can still be taken. In fact, there might even be a loss to the Treasury, as people are required to spend more time on nonproductive endeavors such as filling out log-sheets, when they could be working and producing.

The second point the Committee should consider was brought out very well in a recent "dear colleague" from our colleague Representative Horton, a member of the Federal Paperwork Commission. Mr. Horton's point was well made that these new

regulations represent a reversal of the progress we have made over the past decade in trying to reduce the amount of time and paper that face taxpayers. Mr. Horton carries his point further and suggests that Members support legislation introduced by our colleague Representative Anthony, which is identical the Roemer-Bliley legislation.

I would like to make a third and final point to conclude Mr. Chairman. We all know how this provision came to be part of the law. And I do not quarrel with that. But your Committee and the Congress must insist that it is the proper role of the Congress alone to pass legislation and to make amendments to that legislation.

On January 23, incoming Treasury Secretary Baker commented in his confirmation hearings that Treasury would do something about these regs. In two days, the Internal Revenue Service issued a press release which indicated that significant revisions would be made to the October regulations which would carve out broad exemptions and satisfy the critics of contemporaneous record-keeping.

On the basis on the IRS comments, I do not feel that the anticipated revisions would go nearly far enough to satisfy our problems. Further, the proposed revisions that IRS will produce seem to further complicate an already confusing matter.

But the most important issue to be addressed regarding the IRS is whether the IRS has the authority to change the law—not just the regulations implementing the law. And I am particularly concerned that, in the past month, we have faced a situation where the IRS has actually been working to undercut an effort of Congress to respond to a groundswell of public support for repeal legislation. I think that this puts the IRS in the role of lobbying the Congress and undermining its directives and its legislative efforts.

Mr. Chairman, we had a poor compliance record with pre-1985 law. But we have used a cannon to kill a gnat with these new contemporaneous record-keeping requirements. Further, as the IRS's revisions to its October regs grow, an even more cumbersome process takes shape. All the while, America's small businessmen and women suffer because Congress and the Federal bureaucracy have done a poor job.

The only way we can accomplish all of our goals—increase compliance, reduce paperwork and regain the trust of our constituents—is to repeal contemporaneous record-keeping and go back to the drawing board.

Again, Mr. Chairman, thank you for bringing this matter before your Committee.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions? If not, thank you very much.

Congressman Roemer, welcome to the committee. We look forward to your testimony.

STATEMENT OF HON. BUDDY ROEMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. ROEMER. Thank you, Mr. Chairman, and thanks for having these hearings.

My colleague from Ohio, Tom Luken, and I sent around a letter in response to the latest revisions by the IRS—I am sure not the last revisions but the latest revision—some 70 pages about the feelings of Members of Congress about whether the provisions temporized the regulations enough for their acceptance. We have 157 signatures, all Members of Congress, saying that the latest round of provisions, when judged by those who they would affect, say it is not good enough.

Second of all, Mr. Chairman, I am not a member of your committee, and I respect the work that you do. I am a member of the Small Business Committee, the Banking Committee and started working on this contemporaneous accounting problem some months ago. I introduced, along with 58 cosponsors, H.R. 600. H.R. 600 now has the support of 174 signed cosponsors and we are climbing each day. Our goal, Mr. Chairman, is a complete repeal of section 179(b). It is our feeling that when this contemporaneous accounting was introduced into the law that three questions should have been answered. They were not.

No. 1, how much money are we talking about? What was the loss in revenue that should have been handled by the new provisions in the section?

We asked and looked at the record during the hearings on the Deficit Reduction Act. If credible evidence had indicated cheating on a massive scale, the issue would have been different. When we read the record and questioned the Ways and Means staff, the Senate Finance Committee, the Joint Tax Committee, and the Internal Revenue Service, we found a complete lack of evidence on records of noncompliance. In fact, we found a genuine surprise that a problem even existed. It seems that in a well-founded desire to curb the obvious uses by some luxury car users, the law of unintended consequences took over and these provisions—unworkable on any level—were extended to include farmers, sales and service people, small business owners, firemen, policemen, ambulance drivers, computer owners, and countless others.

In short, the question of "How much money?" was never asked nor answered.

My second question was, "Is legislation necessary?" In other words, could the Congress, as some members of this committee already advised, simply leave the problem to the IRS and hope that it would solve things. Looking at the testimony, that does not seem possible. I went to the dictionary to find the specific definition of "contemporaneous." I found only one. It reads: "existing, occurring or originating during the same time."

After this, it becomes clear to me the IRS had, to say the least, added new complexity in its application of the law. But the original problem does not lay with IRS. It is with the law itself. It is with us.

Finally, my third question was, "Can legislation be drawn which will not reduce the gains made by the luxury car provisions, which I support, but will provide relief from the recordkeeping burdens?" The answer was and is "Yes." The previous standard of "adequate records or sufficient corroboration" allows plenty of room for reasonable but effective enforcement. We should return to it and that is what H.R. 600 and other repeal measures would do.

In his announcement of this public hearing, you, Mr. Chairman, indicated that "the committee is interested in learning what specific additional burdens associated with the new recordkeeping requirements remain in light of the revisions to the original temporary regulations." Therefore, in my role as a member of the Government, I would like to focus on these problem areas, both practical and philosophical, and this is my concluding statement.

First of all, the law and the subsequent regulations have once again increased the complexity of the Tax Code. Let me say it again. At a time when the Tax Code is being fairly criticized as being both unfair and unclear, this regulation and its attempt at modification by the IRS adds to complexity.

Second, the requirements were originally suggested as a means of forcing greater compliance. They don't do that now. By removing recordkeeping requirements for some categories of taxpayers, the new regulations would foster a system in which many could deduct 70-percent usage of a vehicle with little or no substantiation requirement. This would neither encourage compliance on the part of

those who were cheating under the old system nor seem equitable to those paying their own share. Compliance would be down, not up in the new law.

Third, the new regulations virtually ignore several categories of listed property. They deal primarily with vehicle mileage. For the first time in America, last month there were more computers sold in this country than automobiles. The new regulations do not even deal with that kind of physical asset. They do not go near far enough. The application of the word "contemporaneous" is, and in the future will be, far broader than most people realize. Mark my words—if we don't correct the problem now and correct it for all property, we will be held responsible. We are at fault.

Fourth, several ballpark figures have been used in previous hearings on the subject. Regarding the income raised by stricter compliance provisions, annual figures in the neighborhood of \$120 million have been used. Estimates of the annual cost of the compliance range from \$1.2 billion to \$7 billion. How about that for a cost-benefit ratio? We get \$120 million and we ask America to spend \$7 billion. No wonder the budget is out of control. The new math has cut its throat.

Finally, the broader context within which this entire discussion must take place involves the relationship between a Government and its people—the relationship between a Government and its people. With these provisions has come a perception of wrongheadedness, and a perception of inequity which will do nothing but lower the respect each citizen has for the law and for those who make it. I am talking about me now. Unfortunately, much of the damage is irreparable. Through this law and its accompanying sets of regulations, we have told America its Government believes most to be guilty until proven innocent, that no common standard of reasonability can stand up to Federal dictates. If we allow the law to stand, we are telling America its Congress no longer respects the right of fundamental representation. If any Members feel I am overstating the case, I would urge them to return to their office and read their mail. Simply put, this time we have gone too far. It is not too late. We can reverse the tides of complexity and inequity by simply admitting that we made a mistake and repealing this law. These are words a politician never like to use. We were wrong. We made a mistake.

Thank you, Mr. Chairman.

[The prepared statement follows]

STATEMENT OF HON. BUDDY ROEMER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF LOUISIANA

First of all, I would like to thank the Committee and its Chairman for holding these hearings and for allowing me to appear on behalf of the people of the 4th Congressional District of Louisiana. I hope that the hearings will be constructive, and that we in the Congress will be able to stand up and admit the mistake which causes us to be here today.

As you may know, my legislative involvement with this issue began near the start of this session when I, along with 58 cosponsors, introduced H.R. 600. This bill would simply repeal the contemporaneous record keeping provisions which were passed as part of the Deficit Reduction Act of 1984. Right now, my bill has the support of 167 other members. Some 23 other measures for repeal have also been introduced, and to date more than 250 Members of Congress have indicated their support by cosponsoring at least one repeal bill. As the author of H.R. 600 and on behalf of

all other members who seek repeal, my central request today is that the Committee hear our collective message, choose a repeal vehicle from the many offered, and report it to the floor for immediate action.

In support of this request, I would like to offer the following for your consideration:

Before introducing my legislation, I wanted three questions answered. First, I wanted to know what level of abuse warranted this kind of approach. In other words, how much money were we talking about. Obviously, if during the hearings on the Deficit Reduction Act credible evidence had been offered indicating cheating on a massive scale, then the issue would be different. However, what I found in reading the record and in questioning the Ways and Means Committee, the Senate Finance Committee, the Joint Tax Committee and the Internal Revenue Service was not only a complete lack of evidence, but a genuine surprise that a problem even existed. It seems that in a well founded desire to curb the obvious abuses by some luxury car owners, the law of unintended consequences took over and these provisions—unworkable on any level—were extended to include farmers, sales and service people, small business owners, firemen, policeman, ambulance drivers, fishermen, computer owners, and countless others.

On short, the question of "How much money?" was never asked.

My second question was "Is legislation necessary?" In other words, could the Congress, as some members of this committee have advised, simply leave the problem to the IRS and hope it would solve things. My first reaction to the question was based purely on emotion, so I went further. I read the conference report to determine congressional intent. Among its comments were the following:

"... taxpayers are required to substantiate by adequate contemporaneous records any investment tax credit or deduction with respect to the business use of listed property . . ."

"If the taxpayer does not have adequate contemporaneous records, no credit or deduction is allowed with respect to that item."

"With respect to automobiles, logs recording the date of the trip and the mileage driven for business purposes must be kept."

"... any portion of an underpayment of tax attributable to a failure to comply with these contemporaneous recordkeeping provisions is treated as due to negligence in the absence of clear and convincing evidence to the contrary."

I then went to the dictionary to find the specific definition of "contemporaneous." I found only one. It reads: "existing, occurring, or originating during the same time." After this, it became very clear to me that the IRS had, to say the least, added new complexity in its application of the law. But the original problem lay within the law itself, that is, with the word "contemporaneous."

Finally, my third question was "Can legislation be drawn which will not reduce the gains made by the luxury car provisions, but will provide relief from the recordkeeping burdens?" The answer was, and is, simply yes. The previous standard of "adequate records or sufficient corroboration" allows plenty of room for reasonable, but effective, enforcement. We should return to it, and that is what H.R. 600 and the other repeal measures would do.

Now, in his announcement of this public hearing, Chairman Rostenkowski indicated that "the Committee is interested in learning what specific additional burdens associated with the new recordkeeping requirements remaining light of the revisions to the original temporary regulations." Therefore, in my role as member of a government, I would like to focus on those problem areas, both practical and philosophical, which remain.

First of all, the law and subsequent regulations have once again increased the complexity of the tax code. Leaving aside the problems created by two sets of regulations in less than two months, the new thresholds, partial exemptions, and new definitions stemming from 179(b) have created another identity crisis for taxpayers who must determine who they are in the eyes of the IRS. In addition, these requirements are exactly contrary to the positive spirit of tax reform which even the Chairman of this Committee has expressed.

Second, these requirements were originally suggested as a means of forcing greater compliance. However, by removing recordkeeping requirements completely for some categories of taxpayers, the new regulations would foster a system in which many could deduct 70 percent usage on a vehicle with little or no substantiation required. This would neither encourage compliance on the part of those who were cheating under the old system nor seem equitable to those who were paying their fair share.

Third, the new regulations virtually ignore several categories of listed property. According to the Deficit Reduction Act, contemporaneous requirements are extended to cover:

"(i) any passenger automobile, (ii) any other property used as a means of transportation, (iii) any property of a type generally used for purposes of entertainment, recreation, or amusement, (iv) any computer or peripheral equipment, and (v) any other property of a type specified by the Secretary by regulations."

In other words, the application of the word "contemporaneous" is, and in the future will be, far broader than most people realize. Mark my words, if we don't correct this problem now, and correct it for all property, we will be held responsible.

Fourth, several ballpark figures have been used in previous hearings on this subject. Regarding the income raised by stricter compliance provisions, annual figures in the neighborhood of \$120 million have been used. Estimates of the annual costs of compliance have ranged from \$1.2 billion to \$7 billion. We would do well to remember that most figures associated with compliance are deductibles themselves, and that a very real possibility exists for these new provisions to lower revenue.

Finally, the broader context within which this entire discussion must take place involves the relationship between a government and its people. With these provisions has come a perception of wrongheadedness and inequity which will do nothing but lower the respect each citizen has for the law and for those who make it. Unfortunately, much of the damage is irreparable. Through this law and its accompanying sets of regulations, we have told America that its government believes most of it to be guilty until proved innocent, that no common standard of reasonability can stand up to federal dictates. And, if we allow the law to stand, we are telling America that its Congress no longer respects the fundamental right of representation. If any members think that I am overstating the case, I would urge them to return to their offices and read their mail. Simply put, this time we have gone too far.

It is, however, not too late. We can reverse the tides of complexity and inequity by simply admitting that we made a mistake and repeal this law.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions?

Mr. ROEMER. Mr. Chairman, I have a list of cosponsors. It is balanced. It is getting close to 218.

Chairman ROSTENKOWSKI. Thank you.

The Chair calls Congressman Gekas.

STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GEKAS. Thank you, Mr. Chairman. I too have a written statement I wish to offer for the committee.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Welcome to the committee.

Mr. GEKAS. There is only one recommendation which can make any sense at this juncture and that is repent and repeal. We have made a gigantic mistake and we must atone for it. Let us repent and repeal. I say that with an honest feeling that no matter what the salutary effect intended in the new regulations which have been published as of February 20, I hold these up for your examination as being a replication of those held up by Representative Anthony as the first set and find they are just as complicated and just as perplexing as the first.

If the summary is a modicum of relief for those people who have been adversely affected by the original regulations. I accept that, but if you read even peripherally through the new regulations, you find perplexing language in there that is sure to bring us a new barrage of letters, cards, and telegrams like:

The employer may treat the automobile used 70 percent for business and 30 percent for personal purposes, the employer must also determine the amount included

in employees income in the automobile for personal use. It is thought the employee should have the opportunity to document a greater amount of business use and thus reduce the amount of the taxable fringe benefits. Comments are requested as to whether the regulations should require the employer to notify an employee if the employer is using one of the methods described in section 1. Section 1.27416.

Repent and repeal, I repeat, because the new regulations cry out for newer regulations, and that means a continuation of the perplexity. Let's begin with a blank sheet and start all over again. We will not loose indeterminate amounts of revenues. We will simply save our taxpayers a great deal of expense. I, too, can give you a litany of the horror stories including one from a chief of police who feels he is aggravated by this. I am not sure he is on solid legal grounds but just the horror story he gives he would have to mark personal use as compared to one where he grabs his car and runs to an emergency police action really sets forth the nonsensical portions. Repent and repeal.

I have not seen a reaction except from Congressman Schulze. I too want very much to implement the original purpose of the act, and that is to do something about the luxury automobiles, but let's begin with them and end with them and leave everything else to the established way that we were doing business before. The necessary and ordinary business expense portion that we are trying to move toward is being exacerbated by increased CPA fees, lawyers fees, and all other kinds, so we are losing money on that side of the ledger while trying to pick up something on the luxury automobiles. Let's just concentrate on luxury automobiles.

Repent and repeal.

Thank you, Mr. Chairman.

Mr. SCHULZE. Amen.

[The prepared statement follows:]

STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

I first want to express my appreciation to the Ways and Means Committee for holding these timely hearings on an issue of major concern to businesses across the country. I am glad to be provided the opportunity to express the views of my constituents on the tax recordkeeping requirements promulgated by the Internal Revenue Service for business use of an automobile.

It is obvious that the problems created by the IRS' recordkeeping requirements are great; over 27 pieces of legislation have been introduced in the House and the Senate to repeal these burdensome regulations. Over 200 other Members of Congress have also expressed their opposition to these regulations by cosponsoring one or more of these bills. I believe that Congress has realized the mistake it made by the inclusion of this provision in the Deficit Reduction Act. I now feel that it is time for them to act to repeal these provisions.

The response of my constituents and the constituents of many other Members of Congress has been overwhelming. I have received hundreds of phone calls and letters about the new rules in the past few months. I have included portions of these letters from my constituents throughout this statement because I believe that they provide an accurate gauge of the public's attention towards the new IRS regulations.

The great response from my constituents and the constituents of many of my colleagues clearly display that the strong feelings of opposition to these regulations are not going to dissipate until Congress takes prompt action to repeal the contemporaneous recordkeeping requirements for business use of automobiles. Such legislative action is both appropriate and necessary because the cost and burdens imposed by the new law dictate repeal and because it appears that the Internal Revenue Service fails to recognize the magnitude of the problems created by its regulatory action.

As we all know, on January 25, 1985, the Internal Revenue Service announced its intention to issue temporary and proposed regulations modifying the requirement to

keep adequate contemporaneous records for automobiles and certain other vehicles. Although the Internal Revenue Service continually assured my office that these regulations would be published any day, they were not published until February 20, 1985. I cannot help but feel that these proposed regulations will only eliminate some of the inconvenience that these regulations have created. After reviewing these proposed regulations, I believe that businesses and farmers will still be burdened with increased paperwork and man-spent hours adhering to these regulations, a result totally counterproductive to the intents of the Deficit Reduction Act and the 98th Congress; to increase our economic productivity.

We should not place all of the blame for these regulations on the Internal Revenue Service. History dictates that over-excessive legislation will undoubtedly produce overexcessive regulations. It was the Congress, after all, that gave the Internal Revenue Service total free rein in the interpretation and implementation of this provision. The proposed regulations, even as the Internal Revenue Service proposes to modify them, are at once needlessly far-reaching, complex, and vague.

The "adequate contemporaneous" recordkeeping requirements are unreasonable, overly-burdensome, and counterproductive, and raise a large number of practical impediments to compliance for affected taxpayers which bespeaks a failure by the Internal Revenue Service to comprehend the realities of everyday business activity. As one of my constituents wrote:

"I just wanted to let you know I almost drove off the road the other day on the way to work. After shoveling off the snow, I was in a hurry to get going and get in to work on time. After a mile or two I realized that I had forgotten to write down the actual mileage of my car prior to leaving the garage. So that I wouldn't forget to do it, I took my daily log out from under the seat and jotted down the mileage at which I had started; and as I looked up, I was halfway into a turn and almost missed it."

Although I realize that this example may be somewhat exaggerated and dramatic, the main point of the comment is nonetheless very relevant and accurate. These regulations require excessive and unnecessary recordkeeping.

The fact that abuses existed under prior law cannot be questioned. Nonetheless, the vast majority of my constituents affected by the new regulations certainly do not drive "luxury automobiles" and have been accounting for the use of their company cars in a detailed and satisfactory manner under current auditing standards.

The new and additional recordkeeping requirements now imposed for the use of a company-owned or leased vehicle are simply unnecessary and harsh for the majority of taxpayers and will have a negative impact on their business performance and personal productivity. Small businesses, many of which can be found in my district as well as everywhere else in the country, simply cannot afford these additional government imposed paperwork regulations if they are to maintain a competitive position in the marketplace.

The Internal Revenue Service refuses to acknowledge that the maintaining of adequate contemporaneous records creates too severe a burden on business. However, the great amount of Congressional opposition to these initial regulations brought about the proposed revisions of the requirements, which have finally been published in the Federal Register after a month's time. The fact that the Internal Revenue Service clearly was dragging their feet on this matter makes me question the seriousness of their intentions to help relieve some of the burdens that have been placed on this country's businesses. Can we really assume that these proposed regulations will be the last we hear of the many problems that our constituents are having?

A sampling of the comments I received from hundreds of my constituents about the recordkeeping regulations is instructive for the points they make and the problems they underscore . . . practical problems such as loss of productive time, vehicle use for more than one employee, and vehicle and employee transfers which merit careful examination by this committee, which had the foresight to hold this hearings, and by the Congress as a whole.

A constituent from Harrisburg states that: "I wish that some of the people in government would spend one month in business to experience the burdensome reports that we are already required to file with the various agencies of the government. We do not need any more regulations requiring further reporting and tabulation. It is almost as if the government were trying to prevent small business from being able to actively compete with their larger counterparts."

A Chief of Police in my district voices similar sentiments: "Whoever dreamed this regulation up fails to realize that a Chief of Police is first of all never off duty. He needs his vehicle because of its radio equipment and other police equipment he may keep on hand in the event he gets called out in the middle of the night, a weekend

or holiday. When he leaves his home and starts the car he turns the radio on and is at work at that moment." . . . "When I left my home even to go to the local ACME store I was armed and the radio was on. I was on duty and perhaps over a 1000 times got involved in police actions that did not occur on weekdays between nine and five. More than 1000 times I was called out at night and if I had to drive my personal car to the police station in order to pick up a car to communicate with my officers it would be a great handicap. Also each time I used my car there was another unmarked police vehicle on the streets of Lansdown protecting the public."

Yet another constituent states: "If you drive a company car and keep a record book in the glove compartment, it is almost impossible to write down every single trip and its purpose and every single expense. There are so many things that can interfere with the keeping of proper records. If you miss several entries then your records are no longer accurate." . . . "There is also the situation when another company employee drives the car assigned to you and does not record the entries. There is also a situation where you drive another company car and someone has taken the record book out of the car."

A restaurant owner wrote to tell me that: "As a principle owner of a small restaurant—a business which takes 50-60 hours of my life each week, a business which is as much a part of my life as my home and family—it becomes impossible to separate "business" and "personal" miles on the truck and van that I use in many many cases."

It could not be more obvious that the new and additional recordkeeping requirements now imposed for the use of a company-owned or leased vehicle are simply not necessary and are tremendously harsh for the majority of taxpayers and will have a negative impact on their business performance and personal productivity. Small businesses like those that comprise the business communities in my district simply cannot afford these additional government-imposed paperwork regulations if they are to maintain a competitive position in the marketplace.

I do not believe that the problems created by these auto recordkeeping requirements can be rectified by the changes announced by the Internal Revenue Service which would exempt certain taxpayers from the recordkeeping requirements and provide safe harbors for others. The proposed regulations simply eliminate some individuals from these disastrous regulations while still leaving whole segments of affected taxpayers unjustifiably burdened by the new rules.

Consequently, I do not believe that anything short of total repeal of the contemporaneous recordkeeping requirements will resolve the practical problems created by the new regulations. I have introduced legislation in this regard, H.R. 589, as have some 27 other members of the House of Representatives and the Senate, and I am hopeful that Congress will act quickly to join together and pass one comprehensive piece of legislation to repeal these regulations. Time is of the essence, for until taxpayers are guaranteed of the total elimination of these regulations, I am sure that many individuals will be fearful to cease maintaining the necessary records.

The contemporaneous recordkeeping requirements for the business use of an automobile imposed by the Deficit Reduction Act of 1984 were a mistake in the abstract and have proven to be even a worse idea in practice as implemented by the Internal Revenue Service regulations. In reality, the costs to business of complying with the new requirements is likely to be greater than the amount of revenue raised by the government as a result of these regulations. Stated somewhat differently, the cost/benefit ratio of the regulations is clearly indisputable and indefensible and they should be repealed. Congress must act quickly to correct its mistakes before it is too late.

In closing, I would like to again express my appreciation to the Ways and Means Committee for providing me with the opportunity to express my views, and the views of my constituents, on this matter. I would also like to again commend the committee for its recognition of a serious problem and its efforts to rectify that serious problem.

Chairman ROSTENKOWSKI. Thank you.

Congressman Reid, welcome to the committee.

STATEMENT OF HON. HARRY M. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. REID. I appreciate very much the opportunity to appear before you to express my support for the Taxpayers Relief Act of 1985 which addresses contemporaneous recordkeeping, among

other things, and will subsequently be implemented by the Internal Revenue Service.

The 98th Congress deliberated and voted on many issues that aroused the emotions of many citizens of this country. There have been and always will be differences of opinion on the important issues that face us as Members of Congress, and I believe that is as it should be. Yet, I cannot think of another piece of legislation that passed Congress in recent years with such good intentions but has brought about such active bipartisan opposition as the section of the Deficit Reduction Act of 1984 requiring adequate contemporaneous recordkeeping regarding the use of business equipment.

The Deficit Reduction Act of 1984 was passed to help reduce the Federal deficit, but it was also intended to close loopholes and increase fairness in the existing code. Unfortunately, the recordkeeping section does not serve that purpose. One of my constituents said to me, and I quote: "I've never felt so guilty trying to prove my innocence."

I have received hundreds of letters and telephone calls regarding this matter. They have come from all over the State of Nevada. I have received complaints from nearly every type of small business that exists in my State. Farmers, ranchers, miners, service companies, florists, delivery services, construction companies, and sales companies are examples of those who have voiced opposition. Yet, as diverse as their businesses are, their expressed concerns are basically the same—the law is unfair, cumbersome, time consuming, oppressive, and unnecessary. To be perfectly frank, those were some of the more pleasant expressions and comments I have heard.

One conversation I had was with the former Governor of Nevada who is now in private business. He told me that he keeps meticulous, time-consuming records because he wants to comply with the law. He also expressed that he has never seen such an open invitation to be dishonest. His opinion was the same as every person who contacted me—"The cure is worse than the disease."

I know each of you have received similar responses from your own constituents. I brought with me a letter received from a small businessman in Las Vegas. He owns a small electrical business. He attached copies of the record for his 10 service trucks for the first 10 days of January 1985. I will make the letter available for the record. You can readily see the nature of the information that is being kept and see that it is, indeed, a cumbersome project and one that could easily be falsified.

Quoting from the letter, I think the businessman's point is well made: "This nonsense may not be the straw that broke the camel's back, but you're making him damn sore."

I can understand the frustration being expressed by my constituents. The law and regulations are turning productive business people into unproductive bookkeepers for the Federal Government administered through the Internal Revenue Service. Although the IRS announced its intention to ease some of the rules regarding the business use of automobiles and farm vehicles, the changes do not go far enough.

We must repeal the contemporaneous recordkeeping requirements and restore the previous standard of "adequate records or

sufficient corroborating evidence" to document claimed deductions. It is the fair and responsible action to take.

We must do so as soon as possible.

Thank you, Mr. Chairman.

[The prepared statement and letter referred to follow:]

STATEMENT OF HON. HARRY REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman and members of the subcommittee, I appreciate very much this opportunity to appear before you to express my support for the Taxpayer Relief Act of 1985 which addresses contemporaneous record keeping regulations being implemented by the Internal Revenue Service (IRS).

The 98th Congress considered, deliberated and voted on many issues that aroused the emotions of many citizens of this country. There have been and always will be differences of opinion on the important issues that face us as Members of Congress and I believe that is as it should be. Yet I cannot think of another piece of legislation that passed Congress with such good intentions but has brought about such active bi-partisan opposition as the section of The Deficit Reductions Act of 1984 requiring "adequate contemporaneous records" regarding use of business equipment.

The Deficit Reduction Act of 1984 was passed to help reduce the federal deficit, but it was also intended to close loopholes and increase fairness in the existing code. Unfortunately, the record keeping section does not serve that purpose. One of my constituents said to me, and I quote, "I've never felt so guilty trying to prove my innocence."

I have received hundreds of letters and telephone calls regarding this matter. They have come from all over the State of Nevada. I have received complaints from nearly every type of small business that exists in my state. Farmers, ranchers, miners, service companies, florists, delivery services, construction companies and sales companies are examples of those who have voiced opposition. Yet as diverse as their businesses are their expressed concerns are basically the same—the law is unfair, excessive, cumbersome, time consuming, oppressive and unnecessary. To be perfectly frank those were some of the more pleasant expressions and comments I have received and heard.

One conversation I had was with a former Governor of Nevada who is now in private business. He told me that he keeps meticulous, time consuming records because he wants to comply with the law. He also expressed that he has never seen such an open invitation to be dishonest. His opinion was the same as every person who has contacted me, "the cure is worse than the disease."

I know that each of you have received similar responses from your own constituents, but I brought with me today a letter I received from a small businessman in Las Vegas. He owns an electric sales and service business. He attached copies of the records for his 10 service trucks for the first 10 days of January 1985. I will make the letter available for the record. You can readily see the nature of information that is being kept and see that it is indeed a cumbersome project and one that could easily be falsified. Quoting from the letter I think the businessman's point as well made, "this nonsense may not be the straw that broke the camel's back but you're making him damn sore."

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We must repeal the contemporaneous record keeping requirement and restore the previous standard of "adequate records or sufficient corroborating evidence" to document claimed deductions. Its the fair and responsible action to take.

We must do so as soon as possible!

Thank you.

DO IT YOURSELF ELECTRIC,
Las Vegas, NV, January 10, 1985.

Congressman HARRY REID,
Longworth House Office Building,
Washington, DC.

DEAR SIR: We are a small electrical contractor and retail store. We employ an average of ten electricians in the field and operate 12 trucks.

Our accountant has informed us that we now have to log all the mileage on all of our vehicles in order to claim gas and repair expenses.

Inclosed is a small sample of the paperwork involved. We find this not only time consuming and expensive but totally asinine. How could any fool think that service trucks are being used for personal pleasure. Small business is overloaded with paper work solely for the convenience of the government. We would not need an accountant, if not to keep the government from stealing the whole hen house.

Please stop and think of the additional work to you, if you had to list all of your government perks as taxable income (considerably more by the way that we in private enterprise receive). This nonsense may not be the straw that broke the camel's back but you're making him damn sore.

If the Government is so desperate for the few dollars this could net you, please get out of our way so that we can be productive, show a profit and pay honest taxes.

Still respectfully yours,

CALVIN A. LOGAN, *President.*

TOTALS (Post to Car Recap at back)

30

Total reimbursements for month \$_____

31

Month Ending

Cal Logan

Red Dodge 133AST

Date	Day of Week	Destination: From - To Purpose of trip and person contacted.	Mileage Reading		Deductible Business Mileage
			Beginning	End	
1/1	Mon	Cal Logan			
1/2	Tues	KANA - NEHLI APTS RENEW CAR TRIP PURCH STORAGE	55212		on call
1/3	Wed	DECATON PURCH STORAGE			
1/4	Thurs	CITY COUNTY AGO NEHLI STAIRS YOUNG INC	55271		on call
1/5	Fri	ACCOMMOD YOUNG INC DECATON PS RYAN ST LOAN FORMS			
1/6	Sat	NEHLI APTS TRIP			
1/7	Sun	NEHLI APTS LINK SYSTEMS	55333		
1/8	Mon	RENO COURT			
1/9	Tues	RENO COURT LINK SYSTEMS NEHLI APTS	55384		
1/10	Wed	RENO COURT			
1/11	Thurs	NEHLI APTS YOUNG INC NEHLI APTS SAHARA OFFICE			
1/12	Fri	RENO COURT PATRIAL PUMP	55428		
1/13	Sat	NEHLI APTS CITY LOAN FORMS YOUNG INC	55474		
1/14	Sun	CHRISTIANSONS MEDICAL BUILD FIX COURT			
1/15	Mon	RENO COURT TRIP REKRESS LUX BUSHNIA MEDICAL			
1/16	Tues	COUNTY COLADO TANK KANA CITY BOARD	55530		
1/17	Wed	CHRISTIANSONS MEDICAL CITY BUILD KUTAL	55566		
1/18	Thurs				
1/19	Fri				
1/20	Sat				
1/21	Sun				
1/22	Mon				
1/23	Tues				
1/24	Wed				
1/25	Thurs				
1/26	Fri				
1/27	Sat				
1/28	Sun				
1/29	Mon				
1/30	Tues				
1/31	Wed				
Total - This page					
Prior Period					
Cumulative for					

Month: Jan, 1985 Kathy Slout

[illegible]

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

6

Car Mileage & Operating Expenses

[illegible]**Total reimbursements for month**

\$ _____

7

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

[illegible]

Total reimbursements for month \$ 125.00

7

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

6

Car Mileage & Operating Expenses

Total reimbursements for month 7 \$ 100.00

Month: 1, 1985 BOB CLOYD

Date	Destination—Purpose of Trip—Contact	Odometer	
		Begin	End
1/1	NEW YORK		
1/2	SAHARA OFF. EQUIP	56270	56274
1/3	NOT USED		
1/4	DAY OFF		
1/5	SAHARA OFFICE/ALLEN NEL	56274	56279
1/8	ALLEN NEL HOUSE	56279	56319
1/9	ALLEN NEL HOUSE	56319	56335
1/10	SAHARA OFFICE		
1/11	DAY OFF		
1/12	DAY OFF		
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12/30	DAY OFF		
12/31	DAY OFF		
TOTALS	(Post to Car Recap at back)		

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

COURIER
FORD 854-8CV Car Mileage & Operating Expenses

[illegible]

Total reimbursements for month

\$ 214.00

7

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

A/4 6V1225 Car Mileage & Operating Expenses

Total reimbursements for month \$

7

TOTALS: (Post to Car Recap at back)

e. Receipts for oil and gas receipts for transportation and single-employer pension plan contributions.

Total reimbursements for month

\$

Under Retain records for all lockins. Retain records for all

[illegible]

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

6

Total reimbursements for month

7

3

Note: Retain receipts for all loading. Retain receipts for transportation and single expenditures of \$25 or more.

Note: Retain receipts for gas, lodging. Retain receipts for transportation and single expenditures of \$25 or more.

6

Total reimbursements for month \$ 100.00

7

Month: Jan, 1985

Tai, Hoan

[illegible]

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of \$25 or more.

8

Car Mileage & Operating Expenses

[illegible]**Total reimbursements for month**

\$_____

9

Chairman ROSTENKOWSKI. Thank you.
The Chair calls Congressman Rowland.

**STATEMENT OF HON. J. ROY ROWLAND, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF GEORGIA**

Mr. ROWLAND. Thank you, Mr. Chairman. I have a statement I wish to submit for the record.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Mr. ROWLAND. I want to say that last November after my accountant visited a seminar, he learned what the Internal Revenue Service was to do with contemporaneous recordkeeping. I wrote a letter to you and Secretary Regan at that time pointing out the problems. Last year, this matter got very little attention.

After the first of the year when people began to talk to their accountants and learned what was to take place, there was a great deal of concern expressed by my constituents. I had an opportunity to talk to group of farmers in Georgia, and while they were concerned about the low prices they were getting for their commodities and the high costs, they wanted to talk about the recordkeeping that the IRS said they would have to do. The following Sunday at church, I noticed my pastor seemed to be looking at me during the course of the sermon a good deal and, immediately after the service, he motioned to me and said, "I want to talk to you about the recordkeeping."

Many people have been talking to me about the recordkeeping, and I know the IRS is beginning to back off from what it initially proposed. But the changes that are being proposed still do not address the problem. They are talking about giving businessmen an automatic 70 percent business deduction. There may be some people who would use their automobiles more than 70 percent of the time. They will still have to keep the log. There may be some that use them less than 70 percent of the time, so they will be getting a tax break they really do not deserve.

Mr. Chairman, I appreciate the hearing you are holding here today and I hope the Congress will be able to overrule the Internal Revenue Service and go back to the reconstruction of records rather than the contemporaneous records now being proposed.

Thank you very much for this opportunity.

[The prepared statement follows:]

**STATEMENT OF HON. J. ROY ROWLAND, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF GEORGIA**

Mr. Chairman, members of the Committee, thank you very much for scheduling this hearing today. Since I was scheduled as the fourteenth Member to testify before you, I think it is more than apparent that the vehicle recordkeeping requirements are a major concern to Members of Congress.

A few weeks ago, I had the opportunity, along with some of the same colleagues who have spoken today, to testify before the Small Business Committee. At that time, I mentioned how frequently complaints over these recordkeeping requirements have been brought to my attention by constituents of every type occupation.

Mr. Chairman, the reason I am recalling the circumstances of just a few weeks ago is that I fear they have changed, and for the worse.

On February 20, 1985, the Internal Revenue Service published the long-awaited modifications on vehicle logkeeping. This was of course done in two parts, one notice withdrawing the old regulations and a second notice announcing the proposed modi-

fications. Just as I had feared, the announcement of these proposed modifications has resulted in what I perceive to be as reduced momentum for legislation, such as I have cosponsored with Congressman Roemer.

Although I have encouraged all of my constituents to use the public comment period and let the IRS know how they feel about these proposals, I am seriously concerned that the IRS modifications will effectively make a bad situation worse.

As I understand these modifications, taxpayers will be offered options for getting out from under the burdensome "contemporaneous" recordkeeping. But these options concern me greatly. What appears to be an easy solution to the problems of keeping these detailed records is in reality a windfall for those very people the recordkeeping requirements were aimed at.

If we are to make assumptions about the percentage of time an individual uses his car or truck for business in the manner proscribed by the IRS, we are biasing the law in favor of those who have historically overestimated their business use by granting them an automatic 70 to 80 percent deduction, even if their business use nowhere approaches this amount. And those people who use their vehicles predominantly for business will either have to maintain the records or take less than the amount to which they are entitled as a business deduction.

This approach seems totally backward to me. If the intent of the law and the subsequent regulations is to tighten up on those people that are writing off more of a deduction than they are entitled to so that the Treasury is losing revenue, then it is the honest taxpayers that will either be burdened by recordkeeping or pay more taxes than are necessary under the law.

Unfortunately, in the real world we cannot treat adults as if they are in a classroom environment where an effective technique for stopping cheating is to punish the whole class so that peer pressure will force the guilty students to stop cheating. It is not only not that simple, it is not possible to force compliance with the laws of this country by punishing the law-abiding citizens . . . or in this case, making law-abiding citizens lawbreakers.

We also have another tradition in this country which I believe is important to mention here, and that is that citizens of this country are innocent until found guilty. These onerous recordkeeping requirements presuppose the guilt of all taxpayers who use their vehicles for business and this is wrong.

Mr. Chairman, I have heard that this Committee intends to work on a tax simplification proposal and I can certainly think of no better example of where the tax code is too cumbersome. I think the most telling event supporting this is a new business venture I heard of the other day. It seems that an audio-visual company is planning a video cassette explaining recordkeeping.

If this is so, our tax laws have reached the point of absurdity when the people of this country cannot possibly understand what is required of them in order that they not unwittingly break laws.

If the purpose of our tax system is to generate revenue and stimulate economic activity, the recordkeeping requirements do neither. And if it is the intent of this Committee to revise the tax code to generate revenue and stimulate economic activity, the repeal of the recordkeeping requirements is, in my opinion, the best place to start.

Thank you for this time today for me to share with you some of my thoughts and the views of my constituents.

Chairman ROSTENKOWSKI. Thank you.

Congresswoman Lloyd, welcome to the committee.

STATEMENT OF HON. MARILYN LLOYD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Ms. LLOYD. Thank you very much.

We do appreciate the opportunity to appear before you to address the issue of contemporaneous recordkeeping. It is a most appropriate subject for your hearings today, and we commend you for this. We are hearing repeal and repent, but we are also hearing, "Congresswoman, you are going to make a bunch of liars out of us."

The contemporaneous recordkeeping requirement has done nothing but create confusion since it has presented employers with an administrative nightmare. Others are going to speak to you today more directly as to the scope of the compliance procedure. But I do

not think an indepth understanding of tax law is required to recognize the mistake of what we have done, so you are doing a great service by initiating this hearing today.

Certainly in the frame of tax reform a review of recordkeeping under previous law is in order. We do not advocate abuse of the code. We think there was room for abuse. But the 1984 bill does not achieve the objective. What it has done is to impose a confusing burden on just about everyone. Legislation such as I have introduced would put an immediate end to the contemporaneous record-keeping requirement. As part of a more comprehensive tax review, perhaps all of the factors which are involved in record compliance will be reviewed. Only then, and only if widespread noncompliance warrants, can previous changes in the law be brought before the House.

There is one constant I have heard in the Third District of Tennessee and it is that we are lacking concise definitions and a determination of what it is we want the Tax Code to achieve with recordkeeping requirements. We are reaching out blindly to catch abusers of the previous law, but we lack a clear understanding—and I emphasize clear—means of doing so. This provision opens up for question the countless methods by which business operates and yet it never really defines, for example, what constitutes working out of the home. With the technology now available to us, it is not unusual for employees of a number of enterprises to work out of their homes, so the distinction between business and personal use deserves closer examination before the delineation outlined in the contemporaneous record requirement is saddled upon the working people of this country. Such specifics have not been considered and yet the IRS is issuing regulations.

The regulations of February 21 are an improvement, but there are many questions and inequities that still remain. Our concern of how they will be resolved is certainly not insignificant. The February 21 regulation should not be imposed, particularly on our small business people, Mr. Chairman, because so many of them do not have the accountants and consultants needed to comply. The cost to business certainly exceeds by far the return to the Treasury, and such unreasonable requirements beg failure to comply and even stronger distaste for the Tax Code.

At this point, I have received a significant numbers of calls for help from business people, primarily auto users who are aware of the requirements. The IRS cannot continue to revise the regulations. However much they improve their efforts, confusion spreads. This requirement is onerous and repeal is the only logical and equitable course of action.

Thank you, Mr. Chairman.

[The prepared statement follows:]

**STATEMENT OF HON. MARILYN LLOYD, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF TENNESSEE**

Thank you for permitting me to appear before you today. I think the issue of contemporaneous record keeping is a most appropriate subject for this Committee to consider in detail and I commend you for setting aside the time to do so.

I doubt that one member of either this or the other body could be found who agreed with the Deficit Reduction package in total. But it was urgent that its thrust be approved. Essentially, the House version was a defensible measure and as such it

was passed. Only during conference did we find ourselves with a provision bearing the ponderous name of the contemporaneous record keeping requirement. It has succeeded in creating nothing but confusion since it presents employers with an administrative nightmare. Today, others who are tax attorneys will speak more directly to the scope of the compliance confusion. But an in-depth understanding of tax law is not required to recognize a mistake of such magnitude. The Committee is doing the House a service with this initial hearing.

Certainly in the frame of tax reform a review of record keeping under previous law is in order. We do not advocate abuse of the code and certainly there was room for abuse. But the 1984 bill did not achieve that objective. What it has done is impose a confusing burden on just about everyone. Legislation such as I have introduced would put an immediate end to the contemporaneous record keeping requirement. As part of a more comprehensive tax review, perhaps all the factors which are involved with record compliance will be reviewed. Only then, and only if widespread non-compliance warrants, can truly effective changes in the previous law be brought before the House.

Many of my constituents do feel such a review is in order. But there is one constant running through all the comments I've heard from the Third District of Tennessee and that is we are lacking concise definitions and a determination of what it is we want the tax code to achieve with record keeping requirements. We are groping, reaching out blindly to catch abusers of the previous law, but lacking a clear—and I emphasize clear—concise means of doing so. This provision opens up for question the countless methods in which business is conducted and yet never defines, for example, what constitutes working out of the home. With the technology now available to us, it isn't unusual for an employee of any number of enterprises to work out of the home. The distinction between business and personal use demands closer examination before the delineation outlined in the contemporaneous record keeping requirement is saddled upon the working people of this country. Such specifics have not been considered and yet the IRS is issuing regulations.

The regulations of February 21st are an improvement but many questions and inequities remain—not the least of which is the status of a vehicle taken home by an employee for neighborhood security, or to respond to emergency calls? And what of employees who work a routine business day and who make several stops during that day with a company vehicle. These are not insignificant considerations and we can cite many others. The February 21st regulations simply should not be imposed, particularly on small business people, many of whom do not have the consultants and accountants needed to comply. The cost of compliance to business exceeds by far the return to the Treasury. Such unreasonable requirements beg failure to comply and even stronger distaste for the tax code.

But the record keeping requirement does not apply to autos alone. Reference is also made to entertainment and recreation property and to computers. I realize my familiarity with computers is limited, but I cannot conceive of a process by which computer usage could be identified as to business or personal. We cannot in all seriousness expect the American taxpayer to comply with such a requirement. It is beyond me as to how they could without special adaptations.

At this point, I have received a significant number of calls for help from business people who would accept a tightening of previous law but who are baffled as to how they can comply with these regulations. I'm certain that before very much longer, volunteers who can no longer make their needed services available, those who are employed at home and those who use computers for both business and personal use will share the outrage. The protests can only get louder as awareness increases.

The IRS cannot continue to revise its regulations. However much they improve with every effort, confusion spreads. This requirement cannot be justified on the basis of the information now available. It may never be justifiable even after the analysis I have mentioned. The contemporaneous record keeping is onerous. Repeal is the only logical and equitable course of action.

Chairman ROSTENKOWSKI. Thank you.

Congressman Valentine; welcome to the committee, Tim.

STATEMENT OF HON. TIM VALENTINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. VALENTINE. Mr. Chairman I do appreciate this opportunity to express myself on this matter. I appreciate particularly the opportunity to appear before you today and comment on this contem-

poraneous recordkeeping requirement and the effect it will have on many businesses and individuals. I join, Mr. Chairman, with my colleagues who have expressed a similar interest in requesting an immediate repeal of what has become a burdensome and costly task for my constituents and other taxpayers across the country. I introduced H.R. 614 on January 22, 1985 calling for a repeal of the provisions of the 1984 Tax Reform Act relating to the maintenance of the contemporaneous records with respect to the business use of certain property. I have received literally hundreds of letters and telephone calls from my constituents. The objections about the burdens of recordkeeping are not limited to small groups of people who may have abused the Tax Code previously, but are, in my opinion, from a large cross section of American taxpayers.

Our aim should be to simplify the Tax Code and to make compliance less costly for small businesses and farmers. Yet this provision places the greatest burden on this group and will require many of them to add new personnel to keep these records. Farmers, Mr. Chairman, who employ unskilled labor will be particularly burdened. Many of these employees drive pickup trucks associated with farming operations. Yet many of them are not able to keep the required records adequately.

If this provision is permitted to stand, I believe a loss of valuable productivity will occur as a result of this provision of the law. It has been conservatively estimated in testimony before the Small Business Committee that the cost to the consumer is at least \$7 billion. That is an incredible price to pay for a relatively small gain in revenue of slightly more than \$100 million for the Treasury Department.

I understand the Internal Revenue Service has modified the regulations. The new regulations provide a number of alternatives and modifications to the law's requirements. For example, logs are not required for vehicles used exclusively for business purposes or vehicles not used for personal purposes other than commuting. This would clarify the use of a utility company truck equipped with tools necessary to respond to a power emergency or the elimination of a significant expense of an employer of the need to provide security for, or to garage a vehicle, which, if left unattended, is susceptible to vandalism if parked in a company site.

Although clear improvements have been made in the recordkeeping requirement, the new regulations continue to present employers with a formidable administrative task in complying with the complex and arbitrary rules which clearly result in some unfair tax consequences to employers.

In order to address that specific situation, I have also introduced H.R. 1285, which amends section 132(a) subparagraph 3 of the Internal Revenue Code to add to the list of these entities already excluded, law enforcement, rescue and fire vehicle drivers.

Police, for example, are never truly off duty. They are subject to call 24 hours a day. When they are called to duty, they are required to carry out the responsibilities in vehicles equipped for that duty. In addition, many police officers conduct official business even when they are not formally at work. They serve process papers, assist stranded motorists, and even risk their lives in sudden emergency occurrences.

We take the position that it is unfair for the Internal Revenue Service to define these situations as to place an income tax burden on these people and interfere with the discharge of their duties and responsibilities. I believe there are more reasonable alternatives, Mr. Chairman, expressed in the testimony and the legislation which I have introduced and that which has been presented by my colleagues, and I join with my colleagues in urging the committee to act expeditiously on this issue to end the confusion which exists among many people, trying to comply with regulations which have been revised from their inception. The crime in this case does not fit the punishment and I strongly urge the repeal of this provision.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. TIM VALENTINE, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NORTH CAROLINA

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today and comment on the "contemporaneous recordkeeping requirement" and the effect it will have on many businesses and individuals. I join with my colleagues who have expressed a similar interest in requesting an immediate repeal of what has become a burdensome and costly task for my constituents and other taxpayers across the country. Joining with my colleagues, I introduced H.R. 614 on January 22, 1985 calling for a repeal of the provisions of the 1984 Tax Reform Act relating to the maintenance of the contemporaneous records with respect to the business use of certain property.

Mr. Chairman, I have received hundreds of letters and telephone calls from constituents of the Second Congressional District. The objections about the burdens of the recordkeeping simply are not limited to the small groups of people who may have abused the tax code previously, but are from a large cross-section of the American taxpayer.

Our aim should be to simplify the Tax Code and to make compliance less costly for small businesses and farmers. Yet this provision places the greatest burden on this group and will require many of them to add new personnel to keep these records. Farmers who employ unskilled labor will be particularly burdened. Many of these employees drive pickup trucks associated with the farming operations; yet many of them are not able to keep the required records adequately.

If this provision is permitted to stand, I certainly believe a loss of valuable productivity will occur as a result of this onerous provision of the law. It has been conservatively estimated that the cost to the consumer is at least \$7 billion. That is an incredible price to pay for a relatively small gain in revenue of slightly more than \$100 million for the Treasury Department.

I understand the Internal Revenue Service has modified the regulations. The new regulations provide a number of alternatives and modifications to the log requirement. For example, logs are not required for vehicles used exclusively for business purposes or vehicles not used for personal purposes other than commuting. This would clarify the use of a utility company truck equipped with tools necessary to respond to a power emergency or the elimination of a significant expense for the employer because of the need to provide security for, or to garage the vehicle, which, left unattended, would be susceptible to vandalism in the case it is parked overnight on a company site.

Although clear improvements have been made in the recordkeeping requirement, the new regulations continue to present employers with a formidable administrative task in applying the exceptionally complex and arbitrary rules which clearly result in at least some unfair tax consequences to employers. In addition, the new regulations continue to require employers to increase an employees' wages for tax purposes when the employee takes a vehicle home in the evening for security purposes or to respond to a call. A prime example of this is the treatment of the use of law enforcement, rescue and fire vehicles.

In order to address that specific situation, I have also introduced legislation, H.R. 1285, which amends section 132(a)(3) of the Internal Revenue Code to add to the list of those entities already excluded law enforcement, rescue and fire vehicle drivers.

For purposes of "taxing fringe benefits," the IRS would compute the value of such vehicles to be \$4.00 day and the employees would be required to pay income tax on

this amount. This would increase taxable income by some \$1,040.00 per year for public service employees.

Policemen, for example, are never truly off duty. They are subject to call twenty-four hours a day. When they are called to duty, they are required to carry out their responsibilities in vehicles equipped for that duty. In addition, many police officers conduct official business even when they are not formally at work. They serve process papers, assist stranded motorists, and even risk their lives in sudden emergency occurrences.

It is unfair for the IRS to define these situations as appropriate to fringe benefit taxation. It is unfair to tax our police and emergency personnel for using, or being prepared to use, a vehicle required for their duty.

Mr. Chairman, I believe a more reasonable approach, such as that in existence prior to enactment of the Tax Reform Act, should be made to apply across the board, treating taxpayers equitably. Such a standard should allow for the use of reason, and not force taxpayers into a particular method documenting deductions, such as the requirement specified in the IRS regulations.

A taxpayer should not be denied a legitimate deduction for a business expense merely for failing to fill out a log if the expenditure can be proven to be for business by other means. If a taxpayer does not have the records and believes he is entitled to the deduction, the regulations in effect might encourage him to do something that he might later regret. I do not believe we should assist in encouraging this kind of behavior.

I join with my colleagues in urging the Committee to act expeditiously on this issue to end the confusion which exists among many people trying to comply with regulations which have been revised from their inception. The crime in this case does not fit the punishment and I strongly urge a repeal of this provision.

Thank you Mr. Chairman.

Chairman ROSTENKOWSKI. Are there any questions? If not, thank you very much.

Congressman Slaughter, welcome to the committee.

STATEMENT OF HON. D. FRENCH SLAUGHTER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. SLAUGHTER. I am pleased to appear before this committee today in support of H.R. 600, the Taxpayer Relief Act of 1985. This bill would simply repeal the onerous provision in question—section 179(b) of the Tax Reform Act of 1984—and return us to the more practical documentation procedures accepted by the IRS before this section was enacted; that is, "reasonable reconstruction of expenditures."

This contemporaneous recordkeeping requirement is extremely burdensome and irritating to the taxpayer. It is typical of the kind of provision that should not be in our laws. It will cause substantial increases in taxpayer paperwork costs. It will not raise any additional revenue, as tax evaders who fraudulently reported business expenses in the past could certainly doctor their contemporaneous records now.

In response to public dissatisfaction, the IRS has modified this provision to some extent. These modifications only add to the complexity and confusion of the requirements. In some cases, these modifications would allow more deductions than should actually be allowable; in other cases, the deduction is less than it should be. The IRS-mandated farming and business percentages for deductions are arbitrary.

Complications in the Tax Code such as the ones provided by section 179(b) lessen the public respect for the law. Our tax system is based on voluntary compliance; voluntary compliance is essential for our Tax Code to work in a fair and evenhanded manner. This

provision severely threatens voluntary compliance among our Nation's taxpayers, which is already being weakened due to the incredible complexity of our income tax laws.

The contemporaneous recordkeeping provision is a forceful example of the complex and burdensome aspects of our income Tax Code.

We should be moving toward simplicity, not complexity. The American people want a Tax Code that is fairer, simpler, and more efficient in the collection of revenues due the Government than our present law.

The passage of H.R. 600 by this Congress is very important to avoid a further descent into a morass of useless, costly, and complicated paperwork.

Thank you, Mr. Chairman.

Chairman ROSTENKOWSKI. Thank you. Are there any questions? If not, thank you very much.

The Chair calls Congressman Glenn English.

Welcome to the committee, Glenn. We are ready to receive your statement.

STATEMENT OF HON. GLENN ENGLISH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. ENGLISH. Mr. Chairman and members of the committee, I am happy to appear before you on behalf of the taxpayers in Oklahoma's Sixth Congressional District who currently face an extremely threatening Internal Revenue Service requirement.

The contemporaneous recordkeeping requirement, more commonly called the vehicle logging rule, has fallen like axed timber onto American taxpayers. Despite efforts to modify the initial logging requirements, the IRS is basically requiring that certain taxpayers hand over a detailed list of how they spend their day in order to qualify for certain tax benefits on depreciation of their business use of automobiles. The requirement is a serious threat to privacy and clearly contradicts efforts to simplify tax provisions and efforts to reduce paperwork. The recent modifications only add to the chaos and confusion without remedying the problem. During the past weeks, I have heard from hundreds of constituents who oppose these provisions and who continue to support their repeal even after the issuance of the modifications.

Businessmen and farmers simply have better ways to spend their time than filling out trip log books to be tabulated at a later time. The modifications now require these folks to spend even more time studying the "if, and/or buts" clauses in the rules to decide just what kind of recordkeeping requirements they qualify for. I am hearing of cases where folks are sacrificing the tax reduction to which they are entitled just so they will not have to keep the record. I am afraid the modifications will result in even more folks throwing up their hands and losing out on something they could otherwise qualify for. I do not feel this was the intent of the law, and I do not feel this is fair. Many, if not most, of these business people and farmers do not hire fulltime accountants to help them keep these kinds of records.

I have been told, Mr. Chairman, that even rural letter carriers must comply even though they drive the same routes every day.

I voted against the passage of this provision, and I feel the best solution now is to repeal the measure before further damage is done. I stand firm in my continued support for legislation which I introduced to repeal the measure. Despite recently announced modifications, the logging requirement only confuses taxpayers and makes tax simplification an even more distant goal. Consequently, I continue to support complete repeal of the logging rule provision. I urge you and committee members to act as quickly as possible to report repeal legislation to the House floor.

Thank you, Mr. Chairman.

Chairman ROSTENKOWSKI. Thank you, Congressman English.

Are there any questions? If not, we thank you.

The Chair calls Congressman Hubbard. We are ready to receive your testimony. Welcome to the committee.

STATEMENT OF HON. CARROLL HUBBARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. HUBBARD. Thank you, Mr. Chairman and members of the committee. It is indeed an opportunity to appear before you and participate in your hearings on the U.S. Treasury Department's revised temporary and proposed regulations relating to the record-keeping requirements for automobiles and certain other property.

Mr. Chairman, I personally have received more mail on this issue than any other issue since I have been in Congress these 10 years and 2 months with perhaps the common situs picketing legislation and the 10-percent income being withheld by the bank automatically. This would definitely be one of the top three issues since I have been in Congress for prompting protests from the constituents back home.

I represent the First Congressional District of Kentucky, and my district includes 24 counties comprised of business people, farmers, and others. Mr. Chairman, the outcries I have heard from my constituents about these burdensome, unfair, and unnecessary regulations have been loud, numerous, and vehement. Indeed, I hear on a daily basis by letter and phone calls from the many persons who believe the regulations are totally unfair and are a complete intrusion of the Federal Government upon a working individual.

I agree with the constituents who have contacted me. In fact, I am an original cosponsor of legislation, H.R. 600, the Tax Relief Act of 1985, to repeal the contemporaneous recordkeeping requirement and certain other recently enacted provisions of the Internal Revenue Code of 1954. I am also a cosponsor of another measure, H.R. 535, to exempt agricultural vehicles from these unnecessary regulations.

The questions most asked of me by my constituents include the following: "How can I keep a record of how far I have gone on my tractor—my business vehicle—when the tractor doesn't even have an odometer or mechanism by which to measure the distance?" Or, "How can a business afford to hire the additional people that will be necessary to record and log the mountains of records that are

needed by these Internal Revenue Service regulations?" Or, "How on Earth did Congress pass such a law?"

On February 20, 1985, the Internal Revenue Service issued temporary and proposed regulations modifying its October 24, 1984, requirements to keep adequate contemporaneous records for automobiles and certain other vehicles, including farm vehicles, vehicles used for no personal use, certain business vehicles used for only commuting, and certain vehicles used in sales and service.

As a Member of Congress who voted "No" on legislation passed in the last Congress, for a variety of reasons, I find that I do not have the answers to the questions asked by my constituents about how Congress has passed this law. Furthermore, I have no answer to the latest question asked me by one of the sheriffs in the First Congressional District, namely, about how to relate the new rules to special-use vehicles when an officer of the law is off duty, has his police car at his home, and is requested to respond immediately to an emergency call.

Mr. Chairman, already over half of the Members of Congress have cosponsored repeal legislation. And, although there has been a great outpouring of protest from those who have heard of the regulations, many millions of Americans are totally ignorant of them. They will be irate in 1986 when they file their 1985 income tax returns and are penalized by the Internal Revenue Service for failure to produce these mountains of paper records.

Although I agree that there must be a proper balance between bookkeeping burdens imposed upon taxpayers and the need to insure that any deductions or credits which are claimed by a taxpayer are legitimate, I urge you to find the proper balance.

Unfortunately, unless the proper balance is found, the productivity of our Nation will suffer serious setbacks. Indeed, the people of western Kentucky urge you to dispose of the regulations accordingly and allow them to return to their jobs—whether in the fields, cities, or points in between—and let them continue to be productive members of their communities, not merely keepers of records. The people who have complained to me are not crooks, Mr. Chairman; rather, they are law-abiding individuals who are begging the Federal Government to let them get on with their jobs and their lives, while agreeing to pay their fair share of taxes.

Thank you for your attention and assistance relative to this critical issue that is facing America and western Kentucky.

Chairman ROSTENKOWSKI. Thank you, Congressman.

Are there any questions? If not, we thank you.

The Chair calls Congressman Ron Marlenee. Welcome to the committee.

STATEMENT OF HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. MARLENEE. Thank you for holding these hearings.

Mr. Chairman, we have ourselves a lemon. The longer we try to repair this lemon, the more it is going to cost us. It is going to cost us credibility and the cost of resentment, the cost of complying, the cost of taxpayer revolt. What we have is really and truly a lemon. I don't know whose devious mind came up with this incredible night-

mare, but you can bet if they were in my employment or on my staff, he would be looking for a new job. Compared to the suggestions of some of my constituents out there in Montana that, indeed, would be lenient treatment.

Since the first of the year I have been contacted by hundreds of Montanans urging Congress to repeal these senseless regulations. When the IRS wrote these rules they followed their usual practice of writing regulations that would make the Gestapo proud—assume everyone is guilty and force them to prove their innocence. These regulations represent a massive invasion of privacy.

The IRS has no right to know where you go or what you do or who you see or who you go there to be with. In typical IRS fashion, they designed regulations that are far more heinous of the taxpayer than the tax laws. If these laws were not such an abuse of power, they would be comical. If someone had told any of us here today that the IRS would require the people of this Nation to keep a diary of every trip that they make, every place they visited and the reason for those trips, we would have said in the days of old they were crazier than a bedbug. Yet, that is exactly what these discussions here today are all about.

When these rules were made public, the people of Montana immediately demanded relief, and I introduced H.R. 750 to repeal those sections of the Deficit Reduction Act establishing these rules. The IRS yielded to the pressure of Congress and the American people by rewriting the regulation. We still have a lemon and they can't make right out of a wrong. Now, we have a set of rules that still do not address the original problem yet remain a paperwork burden to those who legitimately deserve to deduct full expenses associated with the business use of their vehicles.

Under the new rules those who were abusing the tax laws by deducting 100 percent of their vehicle costs, when they should have been deducting maybe 20 or 30 percent, now have a "safe harbor;" they may deduct up to 80 percent without any kind of substantiation whatsoever. What about the poor person who should be able to legitimately write off 100 percent of his expenses? He is the one who gets caught with having to keep mountainous records and still has to keep a daily diary of his business use of his vehicles.

Under these revised rules employees are still taxed for vehicles provided to them by their employers as part of their wage/benefit package, and employees are required to use company vehicles for commuting are punished with higher taxes.

I am particularly concerned about our policemen, highway patrolmen, and other emergency personnel. These people are being penalized for a job which, sadly, is all too often unappreciated.

Mr. Chairman, I ask unanimous consent to submit the rest of my statement for the record.

Chairman ROSTENKOWSKI. Without objection, it is so ordered.
[The prepared statement and attachments follow:]

STATEMENT OF HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MONTANA

Mr. Chairman, I want to thank you and the other members of the House Ways and Means Committee for holding this hearing on the so-called "log book" record-

keeping requirements that were added to the Internal Revenue Code in the Deficit Reduction Act of 1984.

We've got ourselves a lemon—the longer we repair it, the more it is going to cost us: the cost of credibility, the cost of resentment, the cost of enforcing compliance, and the cost of a taxpayer revolt.

I don't know whose devious mind came up with this incredible paperwork nightmare, but you can be sure that if they were on my staff, they would be looking for a new job. Compared to the suggestions of some of my constituents, receiving a dismissal slip would be quite merciful.

Since the beginning of the year, I have been contacted by hundreds and hundreds of Montanans demanding that Congress repeal these senseless, ridiculous regulations.

When the IRS wrote the rules to go along with this law, they followed their usual practice of writing regulations that would make the Gestapo proud: assume everybody is guilty and then force them to prove their innocence.

These regulations represent a massive invasion of privacy. The IRS has no right to know what you do, who you see, where you go and who you go there with!

In typical IRS fashion, they designed regulations whose abuse of the taxpayer is far more heinous than the abuse of the tax law.

You know, if these rules weren't such an abuse of power, they would be comical. If someone had told any of us here today that the IRS would require the people of this nation to keep a diary of every trip they made, every place they visited, and the reasons for those trips, we would have said they were crazy. Yet that is exactly what we are discussing today.

When these rules were made public, the people of Montana by the hundreds immediately demanded relief and I introduced H.R. 750 to repeal those sections of the Deficit Reduction Act establishing these rules.

The IRS yielded to the pressure from Congress and the American people by re-writing the regulations. Now we have a set of rules that still don't address the original problem, yet remain a paperwork burden to those who legitimately deserve to deduct full expenses associated with the business use of their vehicles!

Under the new rules, those who were abusing the tax laws by deducting 100 per cent of their vehicle costs when they should have been deducting maybe 20 to 30 per cent, now have a "safe harbor"; they may deduct up to 80 per cent without any kind of substantiation whatsoever.

And what about the poor person who should be able to legitimately write off 100 per cent of his expenses? He is the one who gets stuck with keeping mountains of records and still has to keep a daily diary of the business use of his vehicles.

Under these revised rules, employees are still taxed for vehicles provided to them by their employers as part of their wage/benefit packages, and employees required to use company vehicles for commuting are similarly punished with higher taxes.

I am especially concerned about our mail carriers, policemen, highway patrolmen, and other emergency personnel. These people are being penalized for doing a job which—sadly—is all too often unappreciated anyway. Now their government wants to take more from their paycheck for the privilege of taking their work home with them.

There have been a number of bills introduced to repeal the recordkeeping portions of the new law, but my bill also repeals the so-called "luxury vehicle" provisions, as well.

Farmers, ranchers and businesses that purchase vehicles priced above \$16,000 are arbitrarily disallowed the normal, three-year accelerated cost recovery available to virtually everyone else. This is an unfair, totally arbitrary rule which says that every vehicle above \$16,000 is "luxurious", while vehicles below that price aren't.

I'm not arguing that the taxpayers should indirectly pay for the purchases of Rolls Royces, Mercedes and other extremely expensive cars, I just think this is a ridiculous way to legislate. There must be a more reasonable approach to federal tax policy.

I don't think anyone questions the fact that the tax laws with respect to writing off certain business expenses have been abused. The question all of us should be asking is whether or not these rules appropriately address the problem. Clearly, the answer is an emphatic "No!"

Congress has passed legislation forcing everybody—farmers, ranchers, and businesspeople—to embark on a massive recordkeeping nightmare. This is equivalent to using a B-52 bomber to swat a fly, and I am proud to say that I voted against this legislation.

Mr. Chairman, this charade has gone on long enough. We've got a lemon, and we shouldn't try to fix it.

American farmers, ranchers, and businesspeople have suffered for too long. These rules don't address the problem; they are an attack on innocent, hard-working taxpayers; they are an invasion of privacy that only the IRS could invent. I urge this Committee to adopt my legislation, H.R. 750, to completely repeal these regulations.

Mr. Chairman, I have attached several letters from the people of Montana to my testimony, and I ask that they be included with my remarks.

MONTANA SESSION LAWS 1985—HOUSE JOINT RESOLUTION No. 17

A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging repeal of the provisions of the 1984 Tax Reform Act and Internal Revenue Service regulations requiring mileage and use records for business vehicles.

Whereas, the 1984 Tax Reform Act and recent IRS regulations implementing the act require records to be kept for "each business use" of a vehicle, which must show date, mileage, destination, driver, and purpose; and

Whereas, a business failing to keep proper records is subject not only to loss of investment credit and deductions for depreciation, fuel, insurance, repairs, and other expenses, but also is subject to an automatic 5% negligence penalty; and

Whereas, because the law further requires that a person who employs a professional tax preparer must certify that he has kept the proper vehicle log for each vehicle for which credits or deductions are claimed, the person may also be subject to civil and criminal penalties for fraud and false swearing if the IRS later determines that such records were not kept, or were not kept properly; and

Whereas, in many situations it is technically necessary but practically impossible to ensure that employees maintain the proper records for vehicles they use; and

Whereas, most agricultural businesses have many vehicles used primarily for particular purposes, such as fuel transportation, livestock feeding, chemical application, etc., each of which would require separate logs if they are capable of being used for any other personal use; and

Whereas, for a farmer or rancher to record the date, mileage, destination, driver, and purpose for each trip to a field, each trip checking or feeding livestock, each trip along a fenceline, or each trip for machinery repairs is unduly burdensome and in many cases impossible; and

Whereas, many farmers and ranchers, being independent, may simply refuse to keep the records and will lose valuable credits and deductions merely for refusal to keep such records.

Now, therefore, be it resolved by the Senate and the House of Representatives of the State of Montana: That Congress and the IRS are urgently requested to repeal the provisions of the 1984 Tax Reform Act and the implementing IRS regulations requiring records for mileage and use for business vehicles.

Be it further resolved, that a copy of this resolution be sent by the Secretary of State to each member of Montana's Congressional delegation.

BELT, MT, *January 14, 1984.*

RON MARLENEE,
Washington, DC.

DEAR RON: As a Montana rancher, I urge you to do all in your power to repeal the I.R.S. regulation which require extensive bookkeeping in recording mileages on farm and ranch vehicles. This proposed Reg. is not only very impractical and expensive, both for us, and the Bureaucrats who enforce it, in many cases it would be practically unworkable:

According to the booklet we received, "A single entry in the log is required for each trip including local transportation." Just imagine how impractical this would be on a ranch: For example we use our Jeep to haul in baby calves, haul salt, fix fence, pull a manure spreader, etc. during the calving season. Just part of a probable day.

Date and destination—purpose of trip	Odometer	
	Begin	End
February 10: Barn to heifer pen, picked up calf and return to barn.....	29930	29930.4
February 10: Barn to old cows, picked up two calves and returned to barn	29930.4	29930.9

Date and destination—purpose of trip	Odometer	
	Begin	End
February 10: Barn to East Pasture to put out salt and mineral blocks.....	29930.9	29931.9
February 10: Barn to corral to fix broken plank.....	29931.9	29932.1
February 10: Barn to back road to fix broken wires and return to barn.....	29932.1	29934

All for 4 Miles!!!!

Sound a little ridiculous?? No, very ridiculous!!

Please help rid us of this unnecessary and burdensome regulation.

Thank You,

CONSTRUCTION Co.,
Great Falls, MT, January 21, 1985.

Re 1984 Tax Reform Act.

Representative RON MARLENER,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN MARLENER: We are writing this letter to express our concern on the Tax Reform Act of 1984 that created special rules for retaining the tax benefits of company vehicle ownership and collecting taxes on the personal use of company vehicles by employees.

We certainly understand there has been flagrant use of company vehicle use for personal business and pleasure in regard to a fair tax owed to the government for this personal use of vehicles. But we certainly feel there must be a better method of collecting this tax without the numerous record keeping requirements imposed on companies our size in the construction industry.

We have vehicles that are never used for personal use that we are now required to record mileage. We have vehicles taken home by employees to prevent theft or vandalism; we have vehicles used by employees on call who go to and from jobsites from their residences; we have vehicles used to transport employees to jobsites when required by the nature and location of the project. We feel that vehicle use as per the above examples should not be subject to the record keeping requirements.

We understand Congress has decided to take another look at this bill within the very near future. We certainly hope and recommend you request the input of the Associated General Contractors of America, Associated Building Contractors of America and other regional contractors associations to a better approach to their record keeping requirements.

Very truly yours,

President.

Chief Executive Officer.

Senior Vice President.

JANUARY 21, 1985.

DEAR SIR: I am writing you to bring your attention to the recent change in the law that affects the reporting requirements of any person using a car or truck for the business they are engaged in. The "IRS" has put my accountant in an adversary position. The vehicle log books he tells me are required to claim any portion of the expenses I experience are absurd. The justification of each and every mile by documenting who I talk with, and where I stopped each time during the course of a days business is ridiculous. I seek justice in these additional forms of government harassment by telling you how I feel. The log book will only serve the purpose of intimidation, by making the accountant sign that he personally saw such a record when he computes my taxes. It does not prevent "creative writing" done by those who would avoid legitimate taxation. I feel as though my government is putting forth a "Big Brother" approach to curb the abuses of a very small group, at the expense of everyone who drives a business vehicle. Does it make sense to require a

farmer to log every mile driven around his field while feeding his livestock? I dare say the requirement is childish and even ludicrous in its intent.

Please hear my plea for a change in this new requirement. I feel the small business operator will be unfairly treated by implementation of this new law. Not one person I have spoken with about this law can find any equity in its intent. Those of us who must comply, or be denied this important expense deduction to survive in business, are upset and outraged by this intrusion by our government.

Respectfully,

Chairman ROSTENKOWSKI. Thank you.
The Chair calls Congressman Tom Loeffler.
Welcome to the committee Tom.

STATEMENT OF HON. TOM LOEFFLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. LOEFFLER. Thank you, Mr. Chairman, and members of the committee.

Clearly, Congress struck a raw nerve in the imposition of the auto log book requirement. This is an example of how changing a few words in the Tax Code can spawn a regulatory nightmare. Public faith in this institution is eroded, respect for and compliance with the law is undermined, and businesses and individuals across the country have been forced to spend countless unproductive hours trying to understand, interpret, and comply with these new requirements.

I know, Mr. Chairman, this committee intends to focus on the effect of recent revisions by the IRS to its original temporary and proposed rules and on the remaining problems in light of these revisions. I intend to address some of these problems later in my testimony. However, I must strongly assert that we gain nothing by trying to make the best of a bad situation when we have the ability to resolve the matter quickly and satisfactorily by repealing the adequate contemporaneous record requirement and returning to prior law provisions.

Despite the recent modifications made by the IRS significant paperwork requirements remain whose costs are likely to exceed the relatively minuscule additional revenues of \$150 million which the Joint Committee on Taxation estimates this provision will produce in 1985.

In testimony before the House Small Business Committee earlier this month, the National Federation of Independent Business made a conservative estimate that each firm subject to this rule would incur \$1,000 in increased annual costs for both lost hours of productivity and accounting fees. At best, recognizing that the IRS was considering modifications, NFIB estimated that 3 million businesses would be subject to the new rules, resulting in \$3 billion of wasted money.

The revised regulations create additional complexities and ambiguities as well as injecting the issue of discriminatory and inequitable application of the law for different groups of taxpayers. Moreover, the revised regulations raise troublesome issues regarding definitional ambiguities, safe-harbor thresholds, and administrative procedures which pose continuing difficulties for responsible taxpayer compliance. These ambiguities and uncertainties are most disturbing in view of the fact that taxpayers face automatic negli-

gence penalties for errors or insufficient records and a misinterpretation of the new rules could subject a first-time offender to a substantial criminal penalty.

Mr. Chairman and members of the committee, I would like to comment briefly on just a few of the problems in the revised regulations.

No. 1, a special rule providing alternatives to the contemporaneous record rule is provided for business vehicles which, in order to qualify, must be used by an employee during most of the normal business day to make several stops in connection with the employers business. This language is sufficiently vague to present serious problems of interpretation.

No. 2, various safe harbor provisions are provided to those group of taxpayers who may conveniently fit within a broad category amenable to such classification. Nevertheless, this approach excludes other individuals with equally compelling situations and raises the issues of discrimination and equity.

No. 3, even within the safe harbor designations, legitimate problems exist. For example, in the case of salespersons, the Chamber of Commerce has estimated that actual business use may be closer to 90 percent than the 70 percent safe harbor provided in the regulations. The salesperson would be required either to pay taxes on the remaining 30 percent attributed to personal use, or to keep records of personal use. Thus, with paperwork requirements lifted only at the expense of legitimate deductions, it is likely that a significant additional paperwork regime will still result. In addition, other taxpayers, including farmers and ranchers, who might otherwise be eligible for a safe harbor provision, but who use their vehicles for business in excess of the 70 or 80 percent safe harbor, will still be required to keep records to claim additional deductions.

There are additional problems with respect to the safe harbor provisions aimed at farmers and ranchers. There is no provision addressing the case of the farmer or rancher who meets the eligibility requirement of at least 70 percent of gross income from farming and ranching at the beginning of the year, but who, through unforeseen circumstances, may not meet that test at year's end. If the taxpayer in this situation had not kept the contemporaneous records he would be faced with the loss of legitimate deductions. This situation could arise if the taxpayer encountered economic difficulties during the year which forced him to seek outside employment or, in certain other instances, if the spouse of the farmer or rancher have income from an outside job.

Mr. Chairman and members of the committee, obviously you cannot make a silk purse from a sow's ear.

Mr. Chairman, I ask unanimous consent that my entire statement be placed in the record.

Chairman ROSTENKOWSKI. Without objection, your entire statement will be placed in the record.

[The prepared statement follows:]

STATEMENT OF HON. TOM LOEFFLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, Members of the Committee, I appreciate the opportunity you have afforded me and the other witnesses to comment on the contemporaneous record-

keeping requirement contained in the 1984 Tax Reform Act relating to substantiation of business deductions for certain property, including most motor vehicles.

The so-called "auto logbook requirement" and the subsequent Internal Revenue Service regulations have elicited an overwhelming groundswell of public outrage and protest. Clearly, Congress has struck a raw nerve in the American taxpayer.

There has been a growing recognition by Members of Congress that an obscure provision in last year's tax bill, which received little attention and no public hearing or debate, has fueled a massive taxpayer revolt. This is an example of how changing a few words in the tax code can spawn a regulatory nightmare. Public faith in this institution is eroded, respect for an compliance with the law is undermined, and businesses and individuals across the country have been forced to spend countless unproductive hours trying to understand, interpret and comply with these new requirements.

I know that this Committee intends to focus on the effect of recent revisions by the I.R.S. to its original temporary and proposed rules, and on remaining problems in light of these revisions. I intend to address some of these problems later in my testimony. However, I must strongly assert that we gain nothing by trying to make the best of a bad situation when we have the ability to resolve the matter quickly and satisfactorily by repealing the "adequate contemporaneous record" requirement and returning to prior law provisions. It is my understanding that it may have been a common assumption at the time of consideration of the conference agreement that his provision merely clarified or codified current law or practice at that time. However, if there were legitimate questions as to the extent of I.R.S. authority under prior law, the Congress has only exacerbated the situation by inserting the "contemporaneous" requirement without further significant explication. Upon receiving this additional authority which the I.R.S. evidently sought in order to strengthen its enforcement capabilities, the I.R.S. promulgated regulations which go well beyond the bounds of public utility or common sense.

While the Treasury may have expressed concerns, at the time this legislation was considered, regarding noncompliance with the law by taxpayers who may have exaggerated claims for deductions and credits, their response to the addition of "contemporaneous" to the statutory language has been regulatory overkill.

Furthermore, the I.R.S. had the authority under prior law to require adequate substantiation to uphold claims for business deductions. This standard could include "contemporaneous" records in the case of meals, for example, where such treatment is consistent with normal practice. However, for other uses, taxpayers were allowed to "reasonably reconstruct" their expenses. Nevertheless, the I.R.S. under prior law did have the authority to demand adequate records. If we repeal the "contemporaneous" requirement, they will still have that authority. I strongly suggest that any benefits expected to accrue from the application of these new requirements to a broad cross-section of honest American taxpayers who have not intent to defraud the government will be overwhelmed by the negative repercussions, both in terms of time and money wasted in non-productive activity, and in the heightened perception of the federal government as intrusive, inequitable and unreasonable.

Despite recent modifications made by the I.R.S., significant paperwork requirements remain whose costs are likely to greatly exceed the relatively miniscule additional revenues of \$150 million which the Joint Committee on Taxation estimates this provision will produce.

In testimony before the House Small Business Committee earlier this month, the National Federation of Independent Business made a "conservative estimate" that each firm subject to this rule would incur \$1,000 in increased annual costs for both lost hours of productivity and accounting fees. At best, recognizing that the I.R.S. was considering modifications, NFIB estimated that three million businesses would be subject to the new rules, resulting in three billion dollars of wasted money.

The revised regulations create additional complexities and ambiguities as well as injecting the issue of discriminatory and inequitable application of the law for different groups of taxpayers. Moreover, the revised regulations raise troublesome issues regarding definitional ambiguities, safe harbor thresholds and administrative procedures which pose continuing difficulties for reasonable taxpayer compliance. These ambiguities and uncertainties are most disturbing in view of the fact that taxpayers face automatic negligence penalties for errors or insufficient records and a misinterpretation of the new rules could subject a first time offender to a substantial criminal penalty.

I'd like to comment briefly on just a few of the problems in the revised regulations:

(1) A special rule, providing alternatives to the contemporaneous record rule, is provided for business vehicles which, in order to qualify, must be used by an em-

ployee during "most of a normal business day to make several stops in connection with the employer's business." This language is sufficiently vague to present serious problems of interpretation.

(2) Various "safe harbor" provisions are provided to those groups of taxpayers who may conveniently fit within a broad category amenable to such classification. Nevertheless, this approach excludes other individuals with equally compelling situations and raises the issues of discrimination and equity.

(3) Even within the safe harbor designations, legitimate problems exist. For example, in the case of salespersons, the Chamber of Commerce has estimated that actual business use may be closer to 90% than the 70% safe harbor provided in the regulations. The salesperson would be required either to pay taxes on the remaining 30% attributed to personal use, or to keep records of personal use. Thus with paperwork requirements lifted only at the expense of legitimate deductions, it is likely that a significant additional paperwork regime will still result. In addition, other taxpayers, including farmers and ranchers, who might otherwise be eligible for a safe harbor provision, but use their vehicles for business in excess of the 70% or 80% safe harbor, will still be required to keep records to claim additional deductions.

There are additional problems with respect to the safe harbor provisions aimed at farmers and ranchers. There is no provision addressing the case of the farmer or rancher who meets the eligibility requirement of at least 70% of gross income from farming or ranching at the beginning of the year, but, through unforeseen circumstances, may not meet that test at year's end. If the taxpayer in this situation had not kept the contemporaneous records he would be faced with the loss of legitimate deductions. This situation could arise if the taxpayer encountered economic difficulties during the year which forced him to seek outside employment. In this case his economic difficulties would simply be compounded by the penalties of lost legitimate business deductions.

There are other problems. For example, in my state of Texas, in the ranching industry, the average cow herd has less than 50 cows and many cattlemen in this herd-size category could not qualify for the 70% definition of gross income from farming. Therefore, they would not be eligible for this special rule—this discriminates against the small cattle operator. A problem that cuts across all these cases is one in which a spouse may contribute more than 30% of the income in a joint return based on non-farm or ranch employment.

(4) Procedures for some anticipated situations are left pending or not addressed. For example, if an employer elected a 70% or 80% safe harbor exclusion and imputed the remaining percentage as income to the employee as required, there is no provision for the case of an employee who then keeps records of personal use which totals less than 20% or 30% and indicates higher business use. In the interim, the employer would have been including income for tax purposes to that employee which would have been overestimated and the employee would have been overtaxed. There are no procedures for either the employee to be reimbursed by the federal government or for the employer to claim additional business deductions. Comments have been requested by the I.R.S. as to whether both employers and employees should be required to elect the same method at the beginning of the year. But this simply injects new complexities and questions, as I have outlined above.

I think it is safe to say that the regulations are rife with these kinds of problems and unresolved issues and I do not think that they can be satisfactorily addressed through more regulation.

I also have considerable concerns in a related area involving the taxation of certain so-called fringe benefits affecting public safety and law enforcement officials. It defies logic and good public policy to impute income to police officers and sheriff deputies who are required to take vehicles home, and in essence be "on call." If officers are forced to travel to a "place of business" to pick up a vehicle before responding to a distress call, the public's safety and the efficiency of our protection agencies will be severely impaired. This is particularly critical in rural areas where long and often remote distances are involved. By no stretch of the imagination can this kind of activity be termed a "fringe benefit." There should be an exemption for use of emergency vehicles and I applaud another Member of your Committee, my colleague Beryl Anthony for introducing legislation, of which I am a cosponsor, which addresses this issue. I am hopeful that the Committee will remedy this problem as well as the record-keeping matter.

Quite frankly, I am astounded that the I.R.S. regulations implementing the contemporaneous record rule did not raise alarm bells in the Office of Management and Budget which is the official watchdog of the Paperwork Reduction Act and of regulatory impact analyses under Executive Order 12291. We have promised the American taxpayer fewer paperwork requirements which are burdensome, duplicative or

uncost effective, and this year we are heralding tax simplification, yet at the same time we are proposing a new paperwork load which is in egregious violation of both the letter and the spirit of these initiatives.

I think our colleague Frank Horton summarized the situation well in his comments accompanying the Final Report of the Paperwork Commission in 1977 and I believe his words are even more compelling today.

"The theme we heard repeatedly throughout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However, these people are frustrated by a government which, in their view, does not trust them."

"Many people feel, and the Commission agrees, that a multi-billion dollar wall of paperwork has been erected between the government and the people. Countless reporting and recordkeeping requirements and other heavy-handed investigation and monitoring schemes have been instituted based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored and rechecked."

I believe the situation we are in can be summed up by the old adage "You can't make a silk purse from a sow's ear." The I.R.S. is not going to produce good regulations based on this statutory requirement. Problems will continue to haunt us unless we simply bow to common sense and good public policy and repeal this provision.

It would be laughable were it not so tragic that we must expend all this effort and subject our constituents to all this confusion and expense on a matter which barely rates the attention of a footnote. We have thrown honest, hard-working taxpayers into a turmoil by this heavy-handed approach in an exercise which simply isn't worth effort. Unfortunately, the most likely fall-out from this episode will be that more Americans will simply thumb their nose at the government.

I think it is in the best interests of this Committee, of the Congress and the integrity of the tax system, for the Committee to act expeditiously to repeal this provision and return us to the relative sanity of prior law. Mr. Chairman, this dog won't hunt.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions of Congressman Loeffler? If not, we thank you.

The Chair calls Congressman Pashayan. Welcome, Congressman, to the committee.

STATEMENT OF HON. CHARLES PASHAYAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PASHAYAN. Thank you, Mr. Chairman. This is the first time I have appeared before your committee.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Mr. PASHAYAN. The people in my district are pretty conservative. They work hard, they pay their taxes, and I think if they were here, they would simply say there is a very famous saying in Washington—if it works, do not fix it. Mr. Chairman, this is not going to work so let us fix it.

[The prepared statement follows:]

STATEMENT OF HON. CHARLES PASHAYAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am pleased to have this opportunity to testify before the committee regarding the Internal Revenue Service's proposed regulations on contemporaneous recordkeeping for the business use of depreciable property, and to speak in favor of H.R. 600, which would repeal the legislation mandating these regulations. The legislation, part of the Deficit Reduction Act passed last year, would put unreasonable burdens on two major economic groups in my district: agriculture and small business.

Most of the farms in my district have a number of vehicles used daily in routine operations by various workers. To require that a log be filled out every time the key

is turned on this equipment is impractical. One farmer told me "the government is forcing me to cheat on these records" because keeping them contemporaneously is impossible. Many of these vehicles cannot or would not be used for any personal business at all.

The small businessmen in my district complain that this recordkeeping is equally unworkable. Salesmen who travel from client to client will end up spending half their time filling out logs and maintaining this vast paperwork for the government. Though it may appear to be just a small requirement asked of the individual, it is important to remember that it is one additional requirement to a myriad of small and large regulations that are imposed already by the Federal government on the most productive elements of our country.

When President Reagan came into office he promised to get government off the back of the people. The recordkeeping is an example of the bureaucracy acting at the direction of Congress, crawling back onto agriculture and small business. The measure stands contrary to the spirit of the Paperwork Reduction Act, which has eased the government's intrusion into the operation of the marketplace.

I certainly recognize the Treasury Department's interest in having accurate records regarding the depreciation of business property. These regulations encourage the owner of the vehicle either not to bother to depreciate the property or to falsify the records if they are not absolutely correct. Since the Internal Revenue Service could not possibly examine each set of records, it appears that this is an attempt to discourage taxpayers from depreciating their property. In either case the property owner shall suffer, and the government will not collect enough additional tax revenue to justify the burden, not to mention the cost of printing the forms and conducting a minimum of auditing.

Mr. Chairman it is time for the Congress not only to repeal this law, but to examine the rest of the U.S. Code with greater scrutiny to reduce the burdens that it places on small business and agriculture. Inherent in this approach is to examine proposed legislation to eliminate such onerous provisions before they are imposed.

Thank you.

Chairman ROSTENKOWSKI. Thank you very much.

The Chair calls Congressman Toby Roth.

STATEMENT OF HON. TOBY ROTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. ROTH. Thank you, Mr. Chairman, and members of this august committee. Most of the arguments that I was going to make have already been made numerous times, so I would ask unanimous consent, Mr. Chairman, that my full statement be placed in the record.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Mr. ROTH. I receive from my constituents over 200 letters a day on the IRS recordkeeping requirement.

I have learned, because of the new rule, the average businessman spends between 20 minutes and 2 hours to fill out these forms and it saps productivity. These costs are ultimately passed on to the consumer, so I ask this committee to use its usual good judgment and correct obvious oversight that was made in the past.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. TOBY ROTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Chairman, I appreciate the opportunity to be able to testify before you today. On January 21, I introduced H.R. 541, a bill to repeal Section 179(b) of the Tax Reform Act of 1984, which forces taxpayers to keep "adequate contemporaneous records" in order to take ordinary business deductions.

I am delighted that you have acted promptly to bring out into the open all the problems caused by the IRS proposed regulations which require that detailed vehi-

cle logs be kept in order for a farmer or a business person to benefit from the lawful deduction of the expenses incurred by the business use of a car or truck.

These regulations stem from a new paperwork requirement that was imposed by the Tax Reform Act of 1984. Section 179(b) of that Act is an attempt to restrict tax avoidance that is based upon the deduction of vehicle expenses, when such expenses are not truly related to business use.

On October 24 of last year, the Internal Revenue Service proposed regulations to enforce this record-keeping requirement. Those regulations required the taxpayer to keep contemporaneous and excessively detailed vehicle logs in order to receive formerly routine deductions.

In the past several weeks I have interviewed or heard from a large number of small businesspeople, farmers and sales representatives who have attempted to comply with these new rules. They tell me from firsthand experience how costly these rules are.

From 200 letters per day from my constituents, I have learned that because of these new rules the average businessman may spend from 20 minutes to 2 hours per day filling out new forms. They sap his productivity and result in additional costs which ultimately are passed on to the consumer.

At a hearing on this problem held earlier this year by the Small Business Committee, witnesses testified that about thirty million vehicles and drivers were affected by the October 24th regulations. Business people nationwide will spend at least 7 billion dollars worth of their valuable time with the net return to the federal government of an estimated 140 million dollars, a 50 to 1 ratio.

In reaction to this outpouring of protest, on February 20th, the IRS published modified proposed regulations that carve out several exemptions to these record-keeping requirements.

According to the new IRS proposal, farm vehicle users may now elect to keep no records and treat 80 percent of the vehicle use as business and 20 percent as personal use provided that 70 percent of the farmer's gross income is from farming.

Businesses keeping vehicles on the premises during non-business hours and commuters using vehicles only for commuting purposes are also exempt from these record keeping requirements.

Finally, sales and servicepeople may elect not to keep records and treat 70 percent of their vehicle use as business and 30 percent as personal use.

These new regulations merely carve out narrow exceptions to the rule and do little to solve the real problem. Even the exemptions created appear to be artificial and without any substantial merit. The exemptions are narrowly drawn and are unavailable for most taxpayers.

These exemptions simply add further complications and questions and do little to relieve the overall problems created by the confusing and complicated recordkeeping requirements. Entire sectors of affected taxpayers still remain burdened by regulations that make little sense in terms of every day business realities or the amount of revenue the government might gain from the new regulations.

Rather than go back and clarify our intent so there is no chance the IRS will misunderstand it, a task which is probably impossible, we would be better off restoring the previous law. This previous standard applied across the board, treating taxpayers equally.

I have heard repeatedly from my constituents that businesspeople and farmers do not mind paying their fair share of taxes. But they do strongly object to unjustifiable Federal requirements for thousands of pages of unneeded paperwork.

That is why I have introduced legislation which would repeal that provision of the law. I am sure it is why so many of my colleagues are here to testify today.

A repeal of this law would not relieve taxpayers of reasonable record-keeping responsibilities. Taxpayers would still be required to maintain "adequate" records or "sufficient corroborating evidence" to document claimed deductions, just as they did before.

In an attempt to reduce the deficit, Congress has sought various ways to enforce stricter compliance with tax laws. The law however, can go too far. The requirement for compliance can become too burdensome and, eventually, counterproductive. The IRS has taken this Congressional mandate and through its regulation has created an unfair burden.

I do not want to perpetuate a tax loophole or promote tax evasion. I simply believe that Congress must protect taxpayers from an unreasonable requirement to keep excruciatingly detailed logs of mileage, times, dates, and purpose of travel.

It is unfair to burden with unnecessary paperwork businesspeople and farmers and other taxpayers who routinely use vehicles for business purposes. It is unfair to turn productive businesspeople into unproductive bookkeepers for the IRS. It is

unfair for them to spend even more time coping with government red tape. Companies that faithfully follow these regulations have no time to do anything else. This country cannot afford these types of senseless regulations.

Mr. Chairman, I urge this committee to act expeditiously on this issue to end the confusion that exists among people trying to comply with these regulations.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions? If not, we thank you.

The Chair calls Congressman Stenholm. Welcome to the committee. You may proceed with your statement.

**STATEMENT OF HON. CHARLES W. STENHOLM, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. STENHOLM. I ask to have my entire statement in the record.

Chairman ROSTENKOWSKI. Without objection, it is so ordered.

Mr. STENHOLM. I thank you for holding these hearings. I think everything has been said that needs to be said.

I would recall a comment of Justice Oliver Wendell Holmes who was widely quoted: "Taxes are what we pay for a civilized society." I certainly agree with that.

He also said, "The power to tax is not the power to destroy."

Recently, I held a townhall meeting in Abilene, TX, and I was quite frankly shocked at the hostility that many of my constituents felt not only about this contemporaneous recordkeeping requirement but also the overhostility toward our tax system, and I commend you for the leadership that you are taking now today and in the weeks ahead in dealing with this question. I think it goes far beyond the contemporaneous requirement in recordkeeping, and I commend you for your leadership in that area.

I like would make one point for the committee: In the event you choose not to repeal this requirement, which I imagine you will seriously consider doing today, if you do not repeal it, I would ask you to look at one particular area, and that is agriculture, and it is appropriate for in other areas.

For example, the IRS regulation would relieve a farmer of the need to keep vehicle logs if 70 percent of his or her gross income came from farming. This is similar to the provision in effect for sometime concerning farmers' estimated taxes. If a farmer unfortunately has relied on that safe harbor all year long, may be unpleasantly surprised at the end of the year by a poor harvest, a bad market or an unexpected December surge in nonfarm income, the result is a penalty for not paying an estimated tax. I can foresee the same thing happening in regard to the amended vehicle log requirements. After the tax year is over, a farmer may find out that unexpectedly his or her nonfarm income exceeded 30 percent of total income. As a result, that farmer could not take a 60- or 80-percent reduction for the perfectly legitimate farm use and would not have any contemporaneous law.

There is just one point I would seriously urge this committee to look at in the event you choose not to go for repeal but try to make a bad law work better for the obvious purpose we all agree, and I want to make clear my strong sympathy for enforcing our tax laws as efficiently and effectively as possible. I strongly agree that an item claimed as a business deduction should be, in fact, a business

expense and should not reflect the use of business property for personal purposes.

There is no doubt that retaining the contemporaneous record requirements would do that. The question is at what cost, and I think that is the situation that has prompted you to hold this hearing, and I thank you very much for this opportunity to testify.

[The prepared statement follows:]

STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to appear before you today and share with you my thoughts on the requirement that taxpayers keep "adequate contemporaneous records" of the use of "listed" property, such as automobiles.

Justice Oliver Wendell Holmes has been widely quoted as saying, "Taxes are what we pay for a civilized society." Justice Holmes also wrote, "The Power to tax is not the power to destroy." The reason these hearings were called today is that, across our great country, millions of taxpayers believe that Congress and the Administration have forgotten that second prescription by Justice Holmes. "Destructive" is precisely the way they see these recordkeeping requirements: destructive to small businesses, to farmers, and to their trust and confidence in their government.

Some of our colleagues have suggested that this issue has ignited a reaction among average taxpayers like nothing we have seen since Congress was deluged with protests over the now-repealed ten percent withholding of taxes from interest and dividends two years ago. I think that is a reasonable comparison, although I would like to add a qualification: While the complaints I have received about the vehicle log requirements may be fewer in number, so far, those complaining have more than made up for it in intensity.

The late Jack Benny was reputed to have said, "Timing is everything." I found out how true this was, recently. Some time ago, I had invited several employees of the Internal Revenue Service to take part in a town hall meeting in the 17th District of Texas to help answer taxpayers' questions. Little did I anticipate that the town hall meeting would be held during the height of taxpayer outrage over the new vehicle log requirements. I was not prepared for the anger and hostility toward the IRS and our tax system, in general, that I encountered at that town hall meeting and elsewhere across the 17th District. People are not simply disagreeing with a new tax code provision and some new regulations designed to recapture some lost revenue. There is a lot of anger out there, on a number of different levels. I am sorry to see it but I understand it.

The contemporaneous recordkeeping requirement, which appeared in Section 179 of the Deficit Reduction Act of 1984, was well-intentioned, as was much of the rest of that Act. This provision, according to the Joint Committee on Taxation, sought to recapture approximately \$150 million of tax revenues lost each year through insufficient or evasive reporting. All of us in Congress shudder at the thought of the \$90 billion a year that some have estimated unlawfully escape the tax collector. And we all agree that there are many questionable loopholes that can be closed and that there is much justification for additional, reasonable methods of enforcing our tax laws. But somewhere between intention and execution, something has gone wrong.

I think there is widespread acknowledgement that tax revenues were being lost because of the personal use of business vehicles. Some taxpayers knew what they were doing and some were only making honest errors of omission. For example, I heard from one constituent who complained that the new vehicle log requirement meant that he could no longer take a business deduction for commuting between his home and ranch. I had to explain to him that the IRS and the courts had always disallowed such a deduction and that only the reporting requirement had changed. While there was a problem here, however, I believe that Congress and the Administration used a shotgun to take out a target that was more appropriate to a rifle.

I had looked forward with hope, therefore, to the revised regulations the IRS had promised to issue after the groundswell of opposition to the initial regulations published last October 24. I must admit there are some improvements in the February 20, 1985, IRS regulations concerning contemporaneous recordkeeping. Given the constraints of the statutory language of the Deficit Reduction Act of 1984 and the supporting language of its Conference Report, however, I seriously question whether the IRS can rewrite its regulations completely enough to narrow down their gauge from their earlier shotgun approach to a more reasonable, practical approach.

As I mentioned, there are some improvements. A number of my constituents suggested to me that it would be reasonable to presume, in many cases, that a given piece of property is used for business purposes only 70, 80, or 90 percent of the time, and that deductibility could be computed accordingly. There also were suggestions that when business property clearly was not used for personal purposes and an employer had a policy against such use in effect, that no logs should be necessary. Forms of these proposals did work their way into the new IRS regulations.

Many problems remain, however. For example, the revised IRS regulations would relieve a farmer of the need to keep vehicle logs if 70 percent of this or her gross income came from farming. This is similar to the provision that has been in effect for some time concerning farmers' estimated taxes.

If a farmer derives more than two-thirds of his or her gross income from farming, then it is not necessary for that farmer to pay an estimated tax during the tax year. Unfortunately, a farmer who has relied on that safe harbor all year long may be unpleasantly surprised at the end of the year by a poor harvest, a bad market, or an unexpected December surge in non-farm income. The result is a penalty for not paying an estimated tax the farmer never thought, in all good faith, that he or she was required to pay.

I can foresee the same thing happening with the amended vehicle log requirements. After the tax year is over, a farmer may find out that, unexpectedly, his or her non-farm income exceeded 30 percent of total income. As a result, that farmer could not take a 70 or 80 percent deduction for the perfectly legitimate business use of farm vehicles and would not have any detailed contemporaneous logs upon which to rely, either.

There may be ways to fine tune a solution to this problem, such as having the IRS examine previous years' incomes. In this area, as in others, however, I suspect that too much fine tuning will simply add to the possibilities for inequity.

Similarly, some in the construction industry have reasonably suggested that some vehicle use that is for the convenience of the employer simply should not be considered personal use. The example that comes to mind immediately is that of construction job site vehicles that an employer requires its employees to take home overnight to prevent theft or vandalism. This is as much a business expense as constructing a fence around the vehicles and posting a guard. Similar cases arise when employees are "on call" and must, therefore, report to a job site directly from home.

In the best of all possible worlds, I would prefer having the IRS perfect its regulation and having Congress leave the current statutory language as it is. I am appearing here today, however, to urge this Committee to proceed with legislation repealing this provision of the Deficit Reduction Act of 1984. This is not the best of all possible worlds and, for a number of reasons, outright repeal is the least troublesome and most beneficial of all possible solutions.

The IRS first published contemporaneous recordkeeping regulations last October 24. These were followed by regulations concerning fringe benefits on January 7, with which there was some necessary overlap. On January 25, 1985, the IRS issued a release announcing that it would soon be amending its October 24 regulations. These amendments were published on February 20. In the short space of less than two months during the taxable year of 1985, taxpayers have already been given two sets of recordkeeping rules and a clarification, on the side, about fringe benefits. My office has received numerous complaints that taxpayers and their accountants did not completely understand what property was covered by the original regulations. How far are we going to take the taxpayers into this tax year without letting them know, with some certainty, what they need to do to comply with the law?

If we repeal the current log requirements, there still would be an enforceable standard of deduction substantiation on the books, since most of the repeal legislation now before the Committee, including legislation I have co-sponsored, would simply re-implement the previous standard that deductions be supported by "adequate records or by sufficient evidence corroborating (the taxpayer's) own statement."

I want to make clear my strong sympathy for enforcing our tax laws as efficiently and effectively as possible. I strongly agree that an item claimed as a business deduction should be, in fact, a business expense and should not reflect the use of business property for personal purposes.

There is no doubt that retaining the contemporaneous recordkeeping requirement in statute and regulation would catch many current violators of the law, and would educate many who, innocently and unknowingly, would have become violators.

But at what cost?

As you know, some groups estimate that compliance with the current log requirements would cost the private sector up to \$7 billion a year. Everyone seems to agree

that small businesses, farmers, and many others are swamped with government paperwork. We all seem to agree that reductions in paperwork and record-keeping should be the order of the day. How can we ignore the fact, then, that the majority of paperwork imposed by the government upon the private sector is generated by our tax code? Can we, in good conscience, add another substantial burden in this area?

Moreover, it is well known that if you treat an honest man like a liar and a thief, you can make him into one. The government of a free people must, beyond a certain point, trust the people. Otherwise, the result will be twofold: The people will cease to trust the government and they will have increasing incentives to evade the laws of that government.

Now that this issue has been brought out into the bright light of day, there is ample time for this Committee to consider and perfect a new standard for taxpayer compliance, other than contemporaneous recordkeeping. In the meantime, however, a great burden of paperwork and uncertainty should be lifted from the shoulders of the small businessperson, the farmer, and the employee, by repealing the contemporaneous recordkeeping requirements.

Chairman ROSTENKOWSKI. Thank you very much.

Are there any questions of Congressman Stenholm? If not, we thank you.

The Chair calls Senator Heinz.

Welcome to the committee, John. It is nice to have you join us and give us the benefit of your views. We look forward to your testimony.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. It is a privilege to appear before the Ways and Means Committee and to see so much interest in this subject.

Indeed, it is my view that the grassroots movement to repeal the contemporaneous recordkeeping requirement has become literally overwhelming, as I will reflect upon in a moment. It is the one issue I hear people complaining about when I hold a town meeting in my home State of Pennsylvania. I have received over 2,000 letters on this issue. This stack of letters is not the 2,000 letters, but rather it is the mail I have received in the last 5 days, some 600 letters. The mail, at least in my Senate office, is running ahead of and threatens to surpass the mail we received on the Panama Canal Treaty. If we don't act in both the House and Senate to redress the issue of contemporaneous recordkeeping issue, I feel the paperwork burden placed on the American people will soon be shifted to our offices, thanks to all this mail.

Mr. Chairman, the Senate counterpart to the bill H.R. 531 is S. 260 which Senator Pryor and I introduced. The purpose of S. 260 is to repeal the contemporaneous recordkeeping provisions and return to prior law. When we first introduced the bill we had 25 cosponsors. As of today, even after issuance of the new IRS regulations, we have 50 cosponsors.

While the new IRS safe harbor rules offer relief for some, there are tens of thousands of small businesses that would suffer from this unjust paperwork burden.

Let me be frank to say the fault of these regulations is not the Internal Revenue Service. It is required to uphold the laws we pass, and the law we passed last year clearly requires contemporaneous records to be maintained. Unless we repeal it, no matter how

the IRS works, bad law untimately produces bad regulations and this is clearly a bad law.

The IRS estimates that in 1979 approximately 11.3 million individuals claimed a tax deduction for automobiles. That number does not take into account corporations. There are no recent figures available to determine how many people are affected. What is clear is that this provision adversely affects all segments of the business and agricultural communities in a heavyhanded and needless way.

Rather than reading all 600 of these letters, Mr. Chairman, I would like to give you examples of how this is affecting a few different kinds of constituents in my home State of Pennsylvania and what they think about the provision. I will quote very briefly from a few letters. These are their words, not mine.

Mr. R.J. Hutton, a small businessman wrote from West Grove—that is in Dick Schulze's Chester County—he writes in part:

In my own case, my automobile is used 100 percent for business with one minor exception. My home is three-tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. If I document each of those trips and all other miscellaneous business that I have within 5 miles of my office, it will approach a telephone directory size log by year's end. No auditor or IRS agent is ever going to review it.

Mr. Chairman, we recently had a little problem in the Philadelphia regional office because of the fact that the IRS started to attach the bank accounts of literally up to 10,000 Pennsylvanians, New Jersey, and Delaware businesses because of a computer error back in October. I think the committee is aware of this problem. It took the IRS until February to really begin to straighten out the problem. In the mean time, a lot of businesses literally were told by their banks the IRS has come to us and told us to stop issuing credit, stop making payments on checks, to notify your creditors that you are a deadbeat, and so forth. Here we are in the position of multiplying 10, 20, 50, 100-fold records for the Internal Revenue Service to allegedly look at when they can't keep their own records straight. Isn't that the height of folly. When all is said and done, isn't that the best reason to act quickly and fix this law.

Mr. Chairman, I ask that my full testimony appear in the record.

Chairman ROSTENKOWSKI. Without objection, it is so ordered.

Senator HEINZ. I would add I will be submitting comments from Joan Insley, a realtor in Allison Park; Peter Stahl, a pharmacist from Northampton, PA; from David Walsh, a vice president of a water supply company in Harrisburg; from Robert Purse, a florist from Pittsburgh, my hometown; and Edward Vogel, a businessman from Mars, PA, and, finally, comments from Thomas Welling, a contact lens service person in Port Matilda.

I will supply these letters for the record. I encourage all members of the committee to take a look at these examples, but I suspect that you have more than your own fair share in your own mailboxes already.

Thank you.

[The prepared statement and attachments follow:]

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF
PENNSYLVANIA

I commend you and this committee for holding this hearing today, and am pleased to have the opportunity to testify before you and describe the importance of repealing the new automobile recordkeeping requirements.

The grass roots movement to repeal the "contemporaneous" recordkeeping provision has become overwhelming. It is the one issue that I hear people complaining about everytime I hold a town meeting. To date, I have received approximately 2,000 letters from my constituents demanding repeal of the provision—last week I received another 403 letters—so you can see that the demand for repeal is not slowing down. In fact, when Senator Pryor and I introduced S. 260 to repeal the contemporaneous recordkeeping provision and return to prior law, we had 25 cosponsors. Today, even after the IRS issuance of new regulations, we have 50 cosponsors.

The new IRS regulations offer relief for a few—mostly the farmers and the sales or service people who are constantly in their cars. While the new IRS safe harbor rules offer relief to some, there are tens of thousands of small businesses who would be left to suffer from this unjust paperwork burden.

The fault does not lie with IRS; it is required to uphold and enforce the laws which this Congress passes, and the law clearly requires "contemporaneous" records to be maintained. Bad law definitely produces bad regulations, and this is clearly a bad law.

The IRS estimates that in 1979 approximately 11.3 million individuals claimed a tax deduction for automobiles. This number does not even take into account corporations, so there are no recent figures available to determine how many people are affected. What is clear is that this provision adversely affects all segments of the business and agriculture communities in a heavyhanded and needless way.

Let me give you examples of how this is affecting the people in Pennsylvania, and of what they think about the provision. These are quotes from their letters, not my words.

R.J. Hutton: a small businessman wrote from Westgrove, Pa. "I do not understand the need for such recordkeeping and how it could possibly enhance the tax revenue; at least, to the extent of overcoming the headaches, time and effort spent by me and others in our organization for such detailed recordkeeping. In my own case my automobile is used 100% for business with one minor exception. My home is three tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. If I document each of those trips and all the other miscellaneous business that I have within five miles of my office, I will approach a telephone directory size log by year's end. No auditor or IRS Agent is ever going to review it. Such a law is not a good law. Please, on behalf of American business efficiency and productivity change and rid the country of this oppressive, needless law."

Joan Insley, realtor in Allison Park, Pa wrote: "The rules promulgated by the Government regarding the use of cars in business has reached a new high in stupidity and I certainly hope that you will have enough sense to act on repealing the law."

Peter Stahl, a pharmacist from Northampton, Pa wrote: "My personal use of the company car consists of driving home at night and back to work in the morning. Business use of the car consists of deliveries to customers (sometimes 10 to more a day), piking up merchandise at a wholesaler manufacturer or another store, and going to trade shows and seminars. Trying to keep a detailed log (with various drivers) is really a full time job."

David Walsh, a vice president of a Water Supply Co. in Harrisburg, Pa wrote: The IRS ruling will have a very real negative impact on our company due to both the loss of time and productivity of our employees keeping the records. In the water utility business, a vehicle is a necessary tool required to carry out the service to our customers. We all strive for efficiency in order to keep our rates reasonable; this does not work to that end.

Robert Purse, florist from Pittsburgh, Pa wrote: The regulations proposed by the IRS impose an impossible recordkeeping burden on small businesses such as ours which use automobiles extensively for business purposes throughout the year. We believe the IRS regulations could significantly increase our cost of doing business and even our ability to stay in business.

Edward Vogel, a businessman from Mars, PA listed ways that the new requirements were affecting his business. I believe that you will find the points well taken:

User instruction time/user log time—the times needed to instruct users on the correct completion of the log sheet and the time needed to log mileage, destination, etc.

Enforcement time by the employer—the time to reprimand those users who do not comply with the completion regulations.

Interference with daily business activities—takes away from sales time, service time, etc.

Additional bookkeeping—extra workload for an already busy person.

Collection and verification of log sheets—who should do it? This requirement takes a person away from their regular duties.

Additional cost for storage and maintenance of these records (file cabinets, etc.).

Additional expenses for supplies needed by each user (log sheets, clipboards, etc.).

And finally comments from Thomas Welling, a contact lens service person in Port Matilda, PA: "For years, I have recorded the beginning and ending mileage of my daily business trips, no matter if I used my car, or in rare emergencies, my truck. I keep records of gasoline used for business only, keep all receipts for maintenance of my business car. Why must I list the destination, purpose of trip, and contact person? My destination is a different doctor's office each day. Shall I list restroom stops as 'personal' even though I'm on my way to an office 100 miles away? The IRS is entitled only to a record of auto expenses for business purposes, not a detailed log of my every move. A jealous wife asks fewer questions."

I am sure that you are also hearing from your constituents. The public is mad and they have a right to be—the law in 1984 went too far.

My bill, S. 260 repeals the "contemporaneous" recordkeeping requirement, and returns to the law in operation prior to 1985. Previously a taxpayer was required to maintain adequate records or have other sufficient evidence to corroborate his own statement. Requiring some form of recordkeeping shouldn't change—what must change is the contemporaneous requirement. The new law means that virtually each time a person enters his or her car, an entry must be made in a travel log. The record has to be made "contemporaneous" and cannot be reconstructed at a later date. The end result of these new rules and regulations has been a massive amount of new paperwork placed on small businesses and their employees.

The reason for the contemporaneous recordkeeping requirement was Treasury's concern that taxpayers were claiming too large a deduction. There probably are a small number of taxpayers who are cheating—however, the "contemporaneous" requirement goes too far—it is like using a sledge hammer to kill a fly. To catch a few, we are now causing a severe hardship for honest taxpayers, I think the correct approach is to return to prior law.

The Deficit Reduction Act of 1984 also contained provisions under the fringe benefit section which, will require that employees be taxed on the value of the personal use portion of their company car. The purpose of the provision is to prevent companies from providing "company cars" as a form of nontaxable income to their executives. It is a goal I fully support; I am worried, however, about the impact this provision will have on small businesses, where the use of the company car is not for tax avoidance. While, my bill does not address this issue, I intend to request hearings on the fringe benefit portion of the act to determine its impact on small businesses and the correlation between the fringe benefit section and the contemporaneous recordkeeping provisions.

Since the enactment of this legislation, many problems have come to light. I think the opportunity to examine these new rules will be welcomed by many in the small business and farming sector of this country. You and the other members of the committee are to be commended, and I will be more than happy to work with you on these important issues. For many years, we've tried to reduce the paper work burden facing our small businesses. With this new rule, we've headed in exactly the opposite direction. Certainly, expanded recordkeeping in the tax area can often improve compliance, but I think we have to consider the burden it places on small businesses. In this case the "contemporaneous" recordkeeping requirement are clearly too burdensome, and should be repealed.

I hope that this can be done in the very near future. I ask unanimous consent that the full text of my statement be included in the record. I ask unanimous consent that the full text of the letters be included in the record.

THE CONARD-PYLE Co.,
West Grove, PA, February 25, 1985.

Senator JOHN HEINZ,
U.S. Senate, Washington, DC.

DEAR SENATOR HEINZ: I was very pleased to have the opportunity to be among the Pennsylvania Chamber of Commerce Directors when you spoke to them this past Friday. Thank you for taking the time to be with us and especially for explaining your position in several areas.

As the chief executive and major stockholder of a small business in Pennsylvania, I am particularly troubled by the 1984 Tax Law as it pertains to "Business Use Recordkeeping." I do not understand the need for such recordkeeping and how it could possibly enhance the tax revenue; at least, to the extent of overcoming the headaches, time and effort spent by me and others in our organization for such detailed recordkeeping.

One of the most disconcerting thing about the IRS rules and the law in itself is that there is so little agreement on exactly what has to be kept by whom and how detailed such records should be. Ask a tax attorney and an accounting firm and you get two different answers. Check this out with a third party, and you get a third answer. IRS is most confusing.

In my own case my automobile is used 100% for business with one minor exception. My home is three tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. Much of my mileage is local driving between two of our properties less than four miles apart here in Chester County. If I document each of those trips and all the other miscellaneous business that I have within five miles of my office, I will approach a telephone directory size log by year's end. No auditor or IRS agent is ever going to review it. Such a law is not a good law. Please, on behalf of American business efficiency and productivity change and rid the country of this oppressive, needless law.

Thank you.

Sincerely,

R.J. HUTTON, *President.*

MARS METAL REALTY,
Allison Park, PA.

U.S. SENATE,
Washington, DC.
(Attention: H. John Heinz III)

The rules promulgated by the government regarding the use of cars in business has reached a new high in stupidity and I certainly hope that you will have enough sense to act on repealing the law.

Very truly yours,

JOAN INSLEY.

NEUWARD PHARMACY,
Northampton, PA, February 22, 1985.

Senator JOHN HEINZ,
Washington, DC.

DEAR SENATOR HEINZ: We have been trying to keep mileage records under the new IRS requirements since the first of the year and are tearing out our hair trying to comply.

Our business is a retail Pharmacy. My personal use of the company car consists of driving home at night and back to work in the morning.

Business use of the car consists of deliveries to customers (sometimes 10 or more a day), picking up merchandise at a wholesaler, manufacturer or another store, and going to trade shows and seminars.

Trying to keep a detailed log (with various drivers) is really a full-time job.

I would be willing to claim a reasonable percentage of the mileage as personal use, or a certain amount per day or week; but, please give us a break from this mileage mess.

Yours truly,

PETER J. STAHL.

DAUPHIN CONSOLIDATED WATER SUPPLY CO.,
Harrisburg, PA, February 21, 1985.

Hon. JOHN HEINZ,
U.S. Senate, Washington, DC.

DEAR SIR: I strongly support your co-sponsoring of S260 to repeal the reporting requirements on Company vehicle usage which has been brought about by the recent IRS ruling to account for business and nonbusiness usage of company owned vehicles.

The IRS ruling will have a very real negative impact on our company due to both the loss of time and productivity of our employees keeping the records. In the water utility business, a vehicle is a necessary tool required to carry out the service to our customers. We all strive for efficiency in order to keep our rates reasonable; this does not work to that end.

I appreciate your attention to this very serious matter.

Very truly yours,

DAVID P. WALSH,
Vice President.

MUETZEL & PURSE FLORIST,
Pittsburgh, PA, February 12, 1985.

Senator JOHN HEINZ,
U.S. Capitol, Washington, DC.

DEAR SIRS: In behalf of my firm and fellow independent small business members of Florists' Transworld Delivery, I strongly urge you to support enactment of S. 260 and/or H.R. 531 repealing onerous and burdensome record keeping requirements relating to use of automobiles and vans for business/personal use. The regulation recently proposed by Internal Revenue Service imposes an impossible record keeping burden on small businesses such as ours which use automobiles extensively for business purposes throughout the year. We believe this IRS regulation could significantly increase our cost of doing business and even our ability to stay in business. Your support of these retail bills is vital to us and will be greatly appreciated.

Very truly yours,

ROBERT PURSE.

VOGEL DISPOSAL SERVICE, INC.,
Mars, PA, February 22, 1985.

Hon. JOHN HEINZ III,
Senate Office Building, Washington, DC.

DEAR SENATOR HEINZ: We would like to voice our objections to the new IRS Auto Recordkeeping Rules. These new requirements, are not only time consuming and expensive, but they are disruptive as well.

We have listed several important points which affect us and fellow businessmen tremendously and would like them emphasized.

(a) User instruction time/User log time—The time needed to instruct users on the correct completion of the log sheet and the time needed to log mileage, destination, etc.

(b) Enforcement time by the employer—The time to reprimand those users who do not comply with the completion regulations.

(c) Interference with daily business activities—Takes away from sales time, service time, etc.

(d) Additional bookkeeping—Extra workload for an already busy person.

(e) Collection and verification of log sheets—Who should do it? This requirement takes a person away from their regular duties.

(f) Additional cost for storage and maintenance of these records (file cabinets, etc.).

(g) Additional expense for supplies needed by each user (log sheets, clipboards, etc.).

Our supervisory personnel do not work 8:00 a.m. to 5:00 P.M. days, but instead work on an "on call" basis. These people, more often than not, work 12-hour days. In addition, they are required to make special trips to the office/shop/service location at very odd hours of the day and night directly from their homes as the occasion demands.

We shall appreciate your efforts in getting these new rules repealed or at least revised into more reasonable terms.

Sincerely,

EDWARD L. VOGEL, *President.*

WELLING CONTACT LENS SERVICE,
Port Matilda, PA, February 14, 1985.

DEAR SENATOR HEINZ: As a self-employed businessman who must use my car to provide for my family, I strongly protest the 1985 Auto Log requirements. For years, I have recorded the beginning and ending mileage of my daily business trips, no matter if I used my car, or, in rare emergencies, my truck. I keep records of gasoline used for business only, keep all receipts for maintenance of my business car.

Why must I list the destination, purpose of trip, and contact person? My destination is a different doctor's office each day—must I list each patient I see, and tell whether it was a check-up, new contact lens fitting, or clean and polish?

Shall I list restroom stops as "personal— Olmi," even though I'm on my way to an office 100 miles away? The IRS is entitled only to a record of auto expenses for business purposes, not a detailed log of my every move. A jealous wife asks fewer questions.

Who is running this country, anyway? Our elected officials or the IRS? The Internal Revenue Service has a history of "computer problems" that has caused irreparable damage to some businesses. Who gave them so much power? Their hiring of functional illiterates into positions which do not include communication with fellow workers has caused much wasted time and postage for those of us who must prove six times that we paid our taxes three years ago.

I believe the purpose of this new regulation is to discourage the businessman from taking his deduction for auto expenses. It may mean a few dollars more for the IRS from a few people, but my business is too small to survive without it. Is the IRS trying to cause the collapse of small business and raise unemployment?

Revamp the IRS, get IT working right, and get off the backs of the honest tax payer. Big Brother may be watching you, too.

Sincerely,

THOMAS W. WELLING.

Chairman ROSTENKOWSKI. Thank you, Senator.

Are there any questions of the Senator? If not, we thank you very much.

Secretary Pearlman and Commissioner Egger, we welcome you to the committee. You have sat and listened to my colleagues testify with respect to repeal of these recordkeeping requirements. We will be pleased to hear whatever explanations you have with respect to these regulations. Mr. Pearlman, you may proceed.

STATEMENT OF HON. RONALD A. PEARLMAN, ASSISTANT SECRETARY (TAX POLICY), DEPARTMENT OF THE TREASURY

Mr. PEARLMAN. Mr. Chairman and members of the committee, I thought we might make our statements first and then perhaps answer questions together.

Chairman ROSTENKOWSKI. That is fine.

Mr. PEARLMAN. My statement begins with the words, "I am pleased to be here today." I think that was an error. I am appreciative of the opportunity to be here, however, and I will do my best in as noncontroversial way as possible to try to address what obviously is an extremely difficult area, difficult not only for the Internal Revenue Service and Treasury but obviously difficult for taxpayers.

I think for me the most important thing that I could submit to the committee today is that this issue is not a new one. It was a difficult issue for taxpayers and administrators before the 1984 act.

It obviously remains a sensitive and controversial issue, and, most importantly, in my judgment, it is going to remain difficult without regard to whether the Congress acts further in this area.

As with so many tax issues, recordkeeping represents an effort at balancing. What we need to balance is the well-established need for taxpayers to keep records and substantial business expenses or to determine the amount of income that should be properly includable in an employee's return and, on the other hand, the record-keeping burden that obviously is imposed on both individual and corporate taxpayers and the administration of the system. We are sensitive to the need to achieve a proper balance. We try to reflect that in the regulations process and will continue to do that both as regulations proceed and in working with the Congress and with this committee to the extent that the committee is interested in making further changes in the legislation.

As we evaluate where we are and where we should be regarding recordkeeping, I think there are several well-established principles extending well before the 1984 act that should be mentioned. The law is clear and has been for a long, long time. Taxpayers who own property, a car, for example, were entitled to deduct only that portion of the property attributable to business use or were required to include in income that portion of the use of property which is personal.

Second, that commuting has long been considered personal use, not business use. I think it is important to note that the 1984 act did not change that rule.

Finally, the taxpayers have always been required to keep records in order to determine business and personal use. Now it is the recordkeeping that is the subject of the 1984 act and on which I would like to use the rest of my comments.

The 1984 act does not change the rule except as to luxury car and it did not change the rule on commuting. The 1984 act did seek to clarify the recordkeeping. I say clarify because even before the 1984 act it was clear taxpayers had to substantiate business use through the maintenance of records. What was not clear was how and to what extent. Since 1962 it was very clear that very demanding records had to be kept with respect to cars used in connection with travel away from home.

In 1962, in response to the concern that both taxpayers and the Internal Revenue Service and the courts were being burdened with the amount of business use being properly deducted by taxpayers, Congress responded with a rule contained in section 274(d) that documentary evidence had to be maintained to substantiate business travel. Indeed, the legislative history of the 1962 act said that clear contemporaneously kept diaries or account books containing information with respect to the date, amount, nature, and business purpose of an expense may constitute adequate records. Section 274(d) has been in the law for over 20 years. The spirit of 274(d) was that if you did not document the travel expense, you did not get it, and that is clearly the message of the statute and that has been a position of the Service and the courts as issue involving this provision have been litigated over the years.

With respect to local travel, the record requirements were less clear. When there was no evidence of business use, no records kept

at all, no ability on the part of an individual taxpayer or corporate taxpayer to document business use, both the Service and the courts disallowed claimed deductions. When a taxpayer had some probative evidence, then the courts and Revenue Service struggled with trying to establish approximate business use based on appointment books, calendars, other corroborating evidence that a taxpayer could submit including the taxpayer's statement. This was a tedious, inexact process and it is exactly the same problem that Congress addressed in 1962 in the away from home area.

It was also apparent before the 1984 act that because of the lack of recordkeeping standards, we had a serious compliance problem. Commissioner Egger will address this problem in greater detail in his statement.

Let me simply say without adequate records, however we define those adequate records, it is simply impossible for the Internal Revenue Service to administer the law. It was this state of affairs that concerned us back in the summer of 1984. I would suggest this statement feeds on itself. It suggests further noncompliance and business use of a vehicle. Mr. Chairman, you and this committee know that many honest taxpayers who keep records claim no benefit for personal use of a vehicle, as well as millions of taxpayers who do not receive a vehicle as a fringe benefit, can not justify the fairness of a system if we do not try to deal with a compliance problem. The 1984 act sought to do that.

On the House side, as you are well aware, the focus was primarily on luxury cars, but even here in this committee, there was a concern expressed by the Treasury Department and a response by the committee that recordkeeping was inadequate and a presumption was added to the House bill that no greater than 50 percent of the use of a car would be deemed to be business use. The House report went on to say if the presumption were sought to be overcome and a taxpayer claiming greater than 50 percent use, then a higher standard of documentation would be required although the report did not go on to describe what that higher standard of documentation would be.

On the Senate side, in trying to deal with that issue of what kind of documentation would be required, the Finance Committee and ultimately the Congress added a concept of contemporaneous records. It was in the conference report that the concept which I suspect is the most controversial aspect of this act, not in the statute itself.

In October, Treasury published records under the recordkeeping rules. These regulations were controversial as you know. We have tried to deal with the areas of controversy. I might offer that both the original regulations and revised regulations were developed on the basis of input that we sought from people outside of Government and within Government and, indeed, from Members on the House and Senate side. We think now based on the conversations we had with people outside of Government that we did respond in major part to many of the criticisms that we agree people legitimately made with respect to original regulation. That is not to say that the regulations are behind us. They remain very controversial.

We have received criticisms on two issues, one being the question of whether certain individual taxpayers should be exempted. As I

pointed out before, there was an unrelated issue to the 1984 act and our regulations, but obviously it was heightened by the recordkeeping rules that were identified as a result of the 1984 act.

The other issue that we have heard a lot about, which is a general criticism, is that it is burden on the small businessman. All of our safe harbors to be included in our revised regulations most significantly the so-called 70-percent rule, the 80 percent applied to the small businessman. Over the months since those regulations have come out, we have tried to identify more specifically what the precise concern was of businessmen, small or large, as well as categories of occupations so that we can try to deal with them.

We are obviously sensitive to the new repeal bills pending in the Congress. We want to respond in a constructive and positive manner to congressional expressions of concern. In doing this, I think everyone must realize the concerns Congress addressed in 1984. They are real concerns, serious concerns and they remain valid. I would offer to you that repeal of 1984 act does not solve the recordkeeping problem. It simply returns us to an environment where recordkeeping requirements are unclear, where taxpayers, the service, and the courts will have to deal with the problem of recordkeeping in a clear environment. This does not mean that the recordkeeping burden on taxpayers is reduced. It simply means that they are going to have to fight cases and examination and the service with no one really knowing what the rules are.

I suggest that we at Treasury, the Service, and in the Congress can best direct our collective efforts at developing recordkeeping rules that are clear, that address both the legitimate tax compliance concerns that we have and the legitimate recordkeeping burden concerns that taxpayers and businessmen have.

We are very willing to examine situations beyond those described in the proposed regulations. Perhaps special treatment in other situations is appropriate. Further, it may well be appropriate to consider whether a more general recordkeeping requirement, such as a calendar, an appointment book can be substituted for the log.

We urge you in your consideration, Mr. Chairman, members of the committee, to consider seriously, however, whether the requirement that records be contemporaneous be dropped. It is one thing to say that a log may be too demanding. It is another thing to say the taxpayers, when they account for business use of any asset, should not keep some kind of records that are more or less contemporaneous with that use. A deduction not based on some kind of contemporaneous record simply cannot be reliable. It cannot be reliable when the taxpayer seeks to prepare his return in good faith, and it certainly cannot be reliable in the examination process.

The absence of contemporaneous recordkeeping would leave the Internal Revenue Service with no real way to effectively administer and enforce the law. It would return us to a system in which honest conscientious taxpayers are made to feel foolish for complying with rules that others ignore. A tax system based on a self-assessment cannot long endure with such disrespect, and the Treasury cannot afford the potential revenue loss that might result from a reduction in the level of recordkeeping.

We therefore urge you to retain a requirement that the taxpayer maintain records and that those records adequately document busi-

ness use of a vehicle and that those records be more or less contemporaneous records.

I would like just to conclude, Mr. Chairman, by saying that in light of the compliance problems that we have discussed and that the Commissioner is going to address, we think it is increasingly important that tax return preparers continue to play a role in promoting compliance. We all know that it is impossible for the Internal Revenue Service to examine on a broad-based basis. We look to tax return preparers to assist us in encouraging compliance and, therefore, we urge the committee, as you review what is in the 1984 act, to retain the rules that require tax return preparers to encourage their clients to maintain adequate records—whatever adequate records are deemed to be.

Mr. Chairman, I am going to stop at this point and let the Commissioner make his statement.

[The prepared statement follows:]

**STATEMENT OF RONALD A. PEARLMAN, ASSISTANT SECRETARY (TAX POLICY),
DEPARTMENT OF THE TREASURY**

Mr. Chairman and members of the committee, I am pleased to be here today to present the Treasury Department's views on the requirement that taxpayers maintain adequate contemporaneous records to substantiate business use of vehicles. This requirement was imposed in the Deficit Reduction Act of 1984 (the "DRA") to clarify the recordkeeping rules applicable to vehicles used for both business and personal purposes. It was designed to address significant concerns of the Treasury Department and the Congress that taxpayers who won their own vehicles were overstating the business use of these vehicles and claiming excessive tax deductions. Similarly, in the case of vehicles provided to employees by their employers, there was evidence that the income attributable to personal use of these vehicles was significantly understated.

In considering appropriate requirements for the substantiation of business use of vehicles, it is of course necessary to balance revenue and compliance objectives against the costs and burdens that recordkeeping requirements entail for ordinary taxpayers. Among the most important objectives of this Administration has been to reduce the role of government in private lives, including the paperwork and regulatory burdens that governments characteristically impose. The Treasury Department remains committed to this objective and will work to ease regulatory burdens connected with the administration of the tax laws wherever possible.

Our determination to limit regulatory burdens is necessarily disciplined, however, by the need to ensure taxpayer compliance with the Federal income tax system. I needn't remind the members of this Committee that our system of taxpayer self-assessment, which is a marvel to the rest of the world, depends upon public confidence that the tax laws are not only fair, but also fairly administered and enforced. We believe that the substantiation requirements established by the DRA provide the appropriate framework within which to strike a proper balance between fair administration and the burdens of recordkeeping. The specific recordkeeping requirements adopted under the DRA may have been unduly burdensome; recently issued regulations have moderated those requirements, however, and we are willing to work with this Committee to further refine the rules so as to preserve public confidence in the fairness of the system without unduly burdening taxpayers.

BACKGROUND

A. Law Prior to the Deficit Reduction Act of 1984

To understand the reasons for Congress' action in 1984 it is important to review the rules in this area as they existed before the DRA. Prior law applied different substantiation requirements to deductions for business use of a vehicle depending on whether the business use was for "local transportation" or in connection with travel away from home. Business use of a vehicle for local transportation was subject to the substantiation rules applicable to business expenses generally under Section 162 of the Code, whereas the use of a vehicle for travel away from home was subject to the more stringent recordkeeping rules applicable under Section 274(d).

Although a taxpayer bears the burden under Section 162 of proving the amount of an expense and its business purpose, the type of records needed to meet this burden where a vehicle was used locally was unclear under prior law. Without a log, diary or other contemporaneous record indicating the number of miles driven for business and personal purposes, taxpayers, the Internal Revenue Service and the courts had great difficulty determining the amount of business use of a vehicle. When no probative evidence was produced, the courts and the Service routinely disallowed claimed deduction in full.

When a taxpayer came forward with some probative evidence as to business use, however, the Internal Revenue Service or, ultimately, a court was required to estimate the business use of a vehicle based on evidence such as appointment calendars, business records and any other corroborating evidence, including the taxpayer's own statement. See *Cohan v. Commissioner*, 39 F. 2d 540 (2d Cir. 1930). The audit files of the Internal Revenue Service and published tax cases are replete with instances where the taxpayer's failure to keep sufficient records has required the Internal Revenue Service and the courts to engage in the tedious and inexact process of estimating business use by reconstructing records years after the actual use occurred.

Obviously, under prior law, many taxpayers who used vehicles for both business and personal purposes were not keeping adequate records of their business use. Some of these taxpayers made good faith and reasonably accurate estimates of business use, but many others, whether intentionally or not, substantially overstated their actual business use. In addition, employers provided vehicles to employees and routinely failed to account properly for the employees' personal use of the vehicles.

As the testimony of Commissioner Egger will address in more detail, the audit experience of the Internal Revenue Service under prior laws confirms the seriousness of this noncompliance problem. The inability of the Internal Revenue Service to administer the rules regarding personal and business use of vehicles left even well-intentioned taxpayers with little incentive to maintain adequate records and encouraged others to overstate the business use of their vehicles. Honest taxpayers who kept records and did not claim deductions for the personal use of a vehicle, as well as those taxpayers who did not receive the use of a vehicle as a fringe benefit, justifiably concluded that they were shouldering an unfair part of the total tax burden because of the abuses in this area. As I mentioned earlier, such perceptions of unfairness tear at the fabric of our self-assessment system. A basic purpose of the changes brought about in the DRA was to preserve public confidence in the fairness of the tax system.

It is important to contrast the prior law substantiation requirements for local business use of a vehicle with the stricter recordkeeping rules applied to travel away from home under Section 274(d). Under that section a taxpayer must substantiate, by adequate records or by other sufficient documentary evidence corroborating his own statement, the amount of a travel expense, the time and place of the travel and the business purpose of the expense. The legislative history to Section 274(d) states that "a clear, contemporaneously kept diary or account book containing information with respect to the date, amount, nature and business purpose of the expense may constitute an adequate record under this provision."

The regulations issued under Section 274(d), as enacted in 1962, provided that taxpayers could substantiate the use of a vehicle for travel away from home or business by a log, diary or similar record made at or near the time the travel occurred. The intended effect of Section 274(d) was to reduce the administrative and judicial conflicts over the amount of travel expenses incurred by taxpayers while traveling away from home. The essence of the rule was quite simple—no records, no deduction. The courts have interpreted these requirements accordingly, refusing to allow any deductions to taxpayers for use of a vehicle away from home where the taxpayer has no documentary evidence establishing the level of business use.

B. The Deficit Reduction Act of 1984

Prompted by reports that cost recovery allowances were spurring sales of expensive automobiles as well as the knowledge that a substantial number of taxpayers routinely overstated the business use of vehicles, Congress began considering means to curtail business expense deductions claimed for vehicles used in business. The House-passed version of the DRA imposed a limit on the cost of luxury automobiles that could be taken into account in computing depreciation deductions and the investment credit. In addition, the House bill created a presumption that no more than 50 percent of the use of an automobile was for business purposes. The House Report makes clear that taxpayers remained subject to the prior law rule that all business use of a vehicle must be substantiated, but states that this Committee intended "to elevate the standard of proof in cases where the proportion of business

use claimed exceeds 50 percent." H. Rept. 98-432, 98th Cong., 2d Sess. 1388 (1984). The bill, however, was silent on the type of records taxpayers would have to keep to show business use in excess of 50 percent.

The Senate also adopted limits on cost recovery allowances for luxury automobiles, but expanded the compliance provisions to impose specific requirements relating to the types of records taxpayers would be required to keep to claim any deduction or credit with respect to a vehicle. Specifically, the Senate-passed version of the DRA modified Section 274(d) to require that taxpayers must maintain adequate contemporaneous records detailing all business use of a vehicle. The Senate bill also imposed a requirement that tax return preparers could not sign a tax return without verifying the accuracy of a taxpayer's records supporting a claimed deduction.

In conference, the restrictions on cost recovery allowances for luxury automobiles were modified, but the compliance provisions included in the Senate bill were adopted with only minor changes. The DRA provisions relating to recordkeeping state no exceptions; taxpayers must document with adequate contemporaneous records the business use of any vehicle. The Conference Report indicates the breadth of the rule:

If the taxpayer does not have adequate contemporaneous records, no credit or deduction is allowed with respect to that item . . . The Conferees expect that these records will reflect with substantial accuracy the business use of the property. The records must indicate the business purpose of the expense or use, unless the business purpose is clear from the surrounding circumstances.

H. Rept. 98-631, 98th Cong., 2d Sess. 1031 (1984). With respect to automobiles, the Conference Report explicitly states that "logs recording the date of the trip and the mileage driven for business purposes must be kept."

In addition, the Conferees provided that any underpayment attributable to a failure to keep adequate contemporaneous records is treated as negligence, unless the taxpayer produces clear and convincing evidence to the contrary. The Conference Report further provides that claiming a deduction or credit without adequate contemporaneous records could lead to the imposition of tax fraud penalties.

RECORDKEEPING REGULATIONS

The Treasury Department published temporary regulations on October 24, 1984 implementing the DRA changes to Section 274(d). With one narrow exception for vehicles of a type not ordinarily susceptible to personal use, the temporary regulations imposed on all vehicles used for business purposes the requirement outlined in the Conference Report that logs be maintained detailing the date, elapsed mileage and business purpose of each trip. Under the statute, the log requirement applies to taxable years beginning on or after January 1, 1985.

As the effective date of the recordkeeping rules approached, the Internal Revenue Service began to receive a significant number of complaints and comments on the temporary regulations. These comments indicated that the changes to the recordkeeping rules, as well as the temporary regulations implementing those changes, applied too broadly, sweeping within the scope of the log requirement many vehicles and taxpayers that did not involve any of the abuses which prompted Congressional action.

In recognition that the new rules applied too broadly, the Internal Revenue Service announced on January 25 its intention to issue revised regulations, effective January 1, 1985, clarifying the generally applicable recordkeeping requirements and providing a series of special rules which would substantially reduce or completely eliminate the recordkeeping requirement in certain circumstances. In developing the revised regulations, the Internal Revenue Service carefully reviewed each of the comments on the original regulations and also conferred with company administrators and independent consultants knowledgeable on the business use of vehicles. The information gathered from the comments and from these discussions formed the basis for the rules adopted in the revised regulations.

These revised regulations change the recordkeeping rules significantly. First the new temporary regulations clarify that for those taxpayers required to maintain logs, a single entry is sufficient for any period of uninterrupted business use. Thus, for example, a salesman who uses a vehicle to make a series of appointments during a day and has no (other than de minimis) personal use of the vehicle for that day need make only one entry that summarizes the business use. This salesman would only have to record the total mileage driven during the day, not the mileage for each stop. This rule should significantly reduce the recordkeeping burden for those taxpayers who are required to keep logs.

The temporary regulations also provide several special rules that eliminate the log requirement in a variety of circumstances. First, the temporary regulations provide that a vehicle is not subject to the log requirement if it is used in a business, kept on the business premises overnight, and the business has instituted a policy against personal use of the vehicle. Second, a vehicle which is used by employees for commuting, but which otherwise satisfies the above requirements is also exempt from the log requirement if the employer accounts for the commuting value of the vehicle by including \$3 per day in the employee's income. We expect that these two special rules will eliminate the recordkeeping requirement for many business automobiles and virtually all vans, trucks, and special purpose vehicles used in a business.

The other special rules contained in the new temporary regulations are premised on assumptions as to the level of business use of certain classes of vehicles. A taxpayer satisfying certain conditions may elect to treat a designated percentage of the use of a vehicle as business use and the balance as personal use. Alternatively, the taxpayer may elect to keep track of only personal use of the vehicle. These options can be used in two circumstances. First, they are available with respect to a vehicle used in the business of a taxpayer who spends most of a normal business day making deliveries or making calls on customers or clients. Such a taxpayer may elect to treat 70 percent of the use of such automobile (or other vehicle designed for personal use) as for business purposes; the taxpayer may elect to treat 80 percent of the use of any other vehicle (e.g., a truck) as business use. The second circumstance in which these options are available is for vehicles (other than automobiles or other vehicles designed for personal use) regularly used in the business of farming by a taxpayer whose gross income (excluding passive investment income) consists almost exclusively of farm income (at least 70 percent).

Based on the comments which the Internal Revenue Service received on the original regulations, as well as the information supplies by firms and independent consultants with extensive experience on the business use of vehicles, we believe these special rules will exempt from the log requirement a substantial portion of all vehicles used for business purposes. Comments received from interested taxpayers subsequent to the release of those revised regulations confirm this belief.

Of course, the recordkeeping rules remain controversial despite the issuance of the revised regulations. We have received a large number of comments regarding the burden imposed on small businesses by the recordkeeping requirement. In addition, the DRA focused attention on whether a policeman or other public safety employee is taxable on the use of an official vehicle to commute to and from his home.

CONSEQUENCES OF REPEAL

Numerous bills to repeal the recordkeeping rules enacted as part of the DRA have been introduced in both the House and Senate. Repeal of the provisions would resolve few of the issues in this area. Moreover, repeal could increase noncompliance and certainly would result in a significant revenue loss.

Repeal of the DRA recordkeeping rules will not remove the prior law requirement that taxpayers substantiate the business use of vehicles. It will merely perpetuate the uncertainty regarding the nature of the recordkeeping that is required and contribute to the waste of administrative and judicial resources that must be dedicated to resolving controversies where adequate documentary records are not available.

The compliance concerns which prompted Congress to act in 1984 remain valid. Indeed, the controversy and publicity that have surrounded the temporary regulations have heightened taxpayers' awareness of the audit limitations of the Internal Revenue Service in this area, and repeal of the DRA rules could lead to increased noncompliance.

Although the recently revised regulations provide substantial relief from the rules as originally imposed by the DRA and the initial temporary regulations, we recognize that even under the revised regulations many taxpayers will be required to maintain logs. For this reason, the Treasury Department is willing to work with this Committee to refine the existing recordkeeping rules in an effort to preserve the principles of the DRA changes while minimizing the recordkeeping burden on business and the administrative burden of the Internal Revenue Service.

There may be circumstances beyond those identified in the modified regulations which warrant special exceptions to the general recordkeeping rules. If such circumstances are identified we will endeavor to craft the appropriate exceptions. To that end, we invite the members of this Committee and taxpayers generally to assist the Treasury Department in identifying situations which warrant exceptions to the recordkeeping rules.

We are also willing to examine the generally applicable recordkeeping standard to determine whether more practical approaches to substantiation are feasible in lieu of the requirement that taxpayers maintain logs. For example, we will consider whether other contemporaneous records, such as a calendar or appointment book, could serve as a basis for determining the business use of a vehicle.

We urge, however, that the requirement that taxpayers maintain some type of contemporaneous records be retained. When the circumstances of a taxpayer's use of a vehicle do not warrant a special rule, contemporaneous records are necessary to account accurately for business and personal use. A deduction not based on such records cannot be reliable. Perhaps more importantly, the absence of a contemporaneous recordkeeping requirement would leave the Internal Revenue Service unable to effectively administer or enforce the law. We would return to a system in which honest, conscientious taxpayers are made to feel foolish for complying with rules that others ignore with impunity. A tax system based on self-assessment cannot long endure such disrespect nor can the Treasury afford the potentially substantial loss in tax revenues. We therefore urge this Committee to retain a requirement that taxpayers maintain records that adequately document business use of a vehicle.

Finally, in light of the compliance problems we have experienced in this area, it is increasingly important for tax return preparers to play a role in promoting compliance with the recordkeeping rules. Therefore, we urge this Committee to retain the DRA rules relating to tax return preparers.

SUMMARY

The Treasury Department is willing to work with this Committee to develop reasonable recordkeeping rules for taxpayers to substantiate the business use of vehicles. We urge that the Committee recognize the importance of retaining a requirement that a taxpayer maintain sufficient contemporaneous records substantiating his right to claim deductions for the business use of a vehicle.

Chairman ROSTENKOWSKI. Thank you, Mr. Secretary.
Commissioner Egger, you may proceed.

STATEMENT OF HON. ROSCOE L. EGGER, JR., COMMISSIONER OF INTERNAL REVENUE

Mr. EGGER. I would like to put in some perspective here if I can—part of the problem we have heard earlier this morning about going back to the earlier rules.

Before the amendments of the 1984 act, taxpayers could deduct their expenses for business use of automobiles only to the extent they could establish the nature and the extent of the business use. The types of records required to substantiate the use of automobiles varied depending upon whether the travel was "away from home" or "local." Expenses for travel away from home were required to be substantiated under 274(d) by adequate records or by sufficient evidence corroborating the taxpayer's own statement.

On the other hand, local travel expenses were subject to the more general substantiation rules of section 162. Under section 162, a taxpayer may deduct ordinary and necessary expenses incurred in carrying on a trade or business, but bears the burden of proving the amount of an expense and its business purpose.

The courts, however, have consistently denied deductions when taxpayers have failed to provide proof of expenses for business use of automobiles. And a number of the cases that I would like to draw to your attention are cited in my complete statement.

Despite the longstanding rules regarding the need to substantiate expenses, problems remained in the substantiation area. These problems frequently took the form of overstated proportions of business usage of automobiles. While the Service does not have any nationwide compliance project to check specifically on automobile

substantiation, we do have some specific data available on the issue. This data comes from recent Taxpayer Compliance Measurement Program surveys, and from the Statistics of Income reports, as well as selected cases which are currently under examination in the field. Let me briefly review some of this information for you.

The Service conducts a Taxpayer Compliance Measurement Program to measure taxpayer compliance with the tax laws and the regulations. This long-range enforcement and research effort measures total compliance and the major characteristics of compliance as well as noncompliance. In addition, this information is used to formulate the return criteria which we use to select returns for examination. A TCMP survey of individual tax returns filed on forms 1040, 1040A, or 1040EZ is conducted every 3 years. The individual survey is based upon a stratified random sample of about 50,000 filed returns that are representative of the entire filing population. Returns selected for the TCMP survey undergo a comprehensive examination of every line item on the return in order to determine its accuracy and the true tax liability. The most recent data available are for tax year 1979. Tax year 1982 data will be available in a few months.

The most recent TCMP data involving automobile expenses shown on schedule C, which is the profit and loss from business, indicate that about 5.5 million taxpayers claimed nearly \$10.6 billion in automobile expenses; 48 percent of the 5.5 million taxpayers who claimed automobile expenses made errors on their returns; 1.8 million taxpayers overstated their automobile expenses by more than \$1.4 billion, while somewhat less than 1 million taxpayers understated deductions by about \$400 million.

Another way these expenses find their way into the tax returns is by way of form 2106, which is the form used by employees for employee business expenses. In 1979, 5.8 million individual taxpayers claimed a total of \$10.7 billion for employee business deductions. This line item includes all expenses listed on form 2106, which include all employee business expenses, such as automobile expenses and other travel expenses. Of that amount, the amount of overstated deductions was \$2.8 billion. Another group of taxpayers understated their allowable expenses by about \$700 million.

To summarize the schedule C and form 2106 data, we estimate that about 50 percent of the 11.3 million returns claiming these expenses would be subject to adjustment. While we do not have current estimates of lost revenue resulting from the overstatement of expenses, our data indicates that taxpayers claimed something over \$3 billion in excess tax benefits.

But the numbers tell only part of the story. As tax administrators, we must face the problems of substantiation of expenses on a daily basis. In examination after examination, our agents and examiners are faced with records which fail to show the extent of business or personal use. Even worse, we frequently find that taxpayers simply keep no records at all. In these cases we are forced to deal with what the Joint Committee on Taxation has identified as "after-the-fact optimistic estimates—based on inexact recollection." Not surprisingly, significant compliance problems continue.

In order to show you the kind of problems the IRS employees face in this area on a day-to-day basis, we contacted several of our

regions for their firsthand experiences. These responses are indicative of the type of problems that are typically seen.

In one, during 1983 and 1984, a district completed examinations of 937 employees of one large corporation. These individual cases were selected because the issue was identified during the audit of the corporation. Managerial, administrative, and field employees were supplied automobiles by the corporation, which also paid all operating expenses for the vehicles. No employee recordkeeping was required by the corporation regarding personal versus business use of the automobiles. The examination issue was whether to include the fair rental value and operating expenses for the personal use of the automobiles in gross income of the employees. As a result of these examinations, the Service made adjustments in 92.6 percent of the cases. The average adjustment per return was \$846, and the combined total of additional assessments was over \$800,000.

In a second example, a district had several large corporate cases with auto expenses issues. In one instance, the use of luxury cars by a company's officers resulted in adjustments of more than \$240,000. In another case, personal use of automobiles by officers resulted in an adjustment of \$65,000.

In a third example, the districts in one region identified a minimum of 1,116 cases in process or recently closed involving taxpayers claiming 100 percent business use of automobiles. The region has found that, almost without exception, examinations of these returns resulted in adjustments to the amount claimed. Usually the taxpayer has inadequate records or none at all. Specific cases involving automobile expenses include the following:

One large corporate exam resulted in \$35,000 in additional employment taxes for the personal use of corporate automobiles.

Another, a family professional corporation claimed 100 percent business use of three automobiles. Our examination resulted in the disallowance of deductions for one automobile and substantial reduction in business use of the other two. The total adjustment here was \$16,000.

Mr. Chairman, I could go on with many more examples, but I think you see the point that I am making here.

Since Assistant Secretary Pearlman has described both the legislative history surrounding the enactment of the new rules and the regulations themselves, I am not going to burden the committee with further recitation of that sort.

Mr. Chairman, we always invite taxpayers to provide the Service with written comments on proposed regulations. The information provided by the comment process generally enables us to improve and to refine regulations before they become final. In this instance, our normal procedures of publishing proposed regulations and receiving comments prior to the issuance of final regulations was not followed because of the need for immediate guidance to taxpayers. As a result, the regulations at issue are in both proposed and temporary form. We urge the public to provide us with comments by April 8, 1985. In addition, a public hearing on these regulations is already scheduled for April 16, 17, and 18.

Mr. Chairman, today Assistant Secretary Pearlman and I have attempted to demonstrate that the Service's initial temporary and

proposed regulations requiring substantiation of a deduction or credit by "adequate contemporaneous records" were an accurate interpretation of the law and of congressional intent. We believe that a fair reading of the legislative history and the joint committee explanation confirms that judgment.

As you debate this issue, I would hope that you would keep the fundamentals of sound tax administration clearly in mind. As you are aware, the income tax system in this country is based on voluntary self-assessment. We depend on taxpayers to honestly and accurately assess their tax liabilities and, for the most part, the taxpayers justify the faith that we place in them.

If we expect taxpayers to continue to warrant our faith, we must endeavor to assure them that the system works and the system is fair. If taxpayers lose their respect for the system, we can expect serious consequences in the area of voluntary compliance.

While I recognize the burdens associated with recordkeeping, I see no realistic alternative to the maintenance of records. Records not only enable the tax administrator to perform its function, but also assure that taxpayers will receive the full amount of tax benefits to which they are entitled.

Mr. Chairman, I will be pleased, along with Assistant Secretary Pearlman, to try to answer any questions you or members of the committee may have.

[The prepared statement follows:]

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE

Mr. Chairman and members of the committee, it is a pleasure to be here with Assistant Secretary Pearlman and you today to discuss regulations relating to recordkeeping for automobiles and certain other property.

In my testimony, I will discuss the administrative problems under prior law; the amendments made by Public Law 98-369, the Tax Reform Act of 1984; and our efforts to implement the law.

With me today are several officials from the Service familiar with this issue. We will be available to try to answer any questions you may have at the conclusion of my opening statement.

RECORDKEEPING UNDER PRIOR LAW

Prior to the amendments made by the Tax Reform Act of 1984, taxpayers could deduct expenses for the business use of an automobile only to the extent that they could establish the nature and extent of the business use. The types of records which were required to substantiate the use of automobiles varied depending upon whether the travel was "away from home" or "local". Expenses for travel away from home were required to be substantiated under section 274(d) by "adequate records or by sufficient evidence corroborating . . . [the taxpayer's] own statement". On the other hand, local travel expenses were subject to the more general substantiation rules of section 162. Under section 162, a taxpayer may deduct ordinary and necessary expenses incurred in carrying on a trade or business, but bears the burden of proving the amount of an expense and its business purpose.¹ The courts have consistently denied claimed deductions when taxpayers have failed to provide proof of expenses for the business use of automobiles.²

¹ For local travel expenses, courts have used the so-called *Cohan* rule (See *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930) to approximate deductible expenses where sufficient records did not exist. Since the enactment of section 274(d) in 1962, the *Cohan* rule has not been applicable to travel expenses incurred by taxpayers while away from home.

² See *F.G. Tidwell v. Commissioner*, 298 F.2d 864 (4th Cir. 1962) (taxpayer did not satisfy burden of establishing by "detailed evidence" the amount to be allocated to business and personal use); *Lustman v. Commissioner*, 322 F.2d 253 (3rd Cir. 1963) (taxpayer was unable to furnish business records to substantiate extent of business use of automobile; taxpayer offered only his

Continued

ADMINISTRATIVE PROBLEMS UNDER PRIOR LAW

Despite the longstanding rules regarding the need to substantiate expenses, problems remained in the substantiation area. These problems frequently took the form of overstated proportions of business usage of automobiles. While the Service does not have any nationwide compliance project to check specifically on automobile substantiation. We do have some specific data available on the issue. This data comes from recent Taxpayer Compliance Measurement Program (TCMP) surveys, from Statistics of Income reports, and from selected cases now under examination in the field. Let me briefly review some of this information for you.

The Service conducts a Taxpayer Compliance Measurement Program to measure taxpayer compliance with the tax laws and regulations. This long-range enforcement and research effort measures total compliance and the major characteristics of compliance and noncompliance. In addition, this information is used to formulate the return criteria the Service uses to select returns for examination. A TCMP survey of individual tax returns filed on Forms 1040, 1040A or 1040EZ is conducted every three years. The individual survey is based upon a stratified random sample of approximately 50,000 filed returns that are representative of the entire filing population. Returns selected for the TCMP survey undergo a comprehensive examination of every line item on the tax return in order to determine its accuracy and the true tax liability. The most recent data available are for tax year 1979; tax year 1982 data will be available in a few months.

The most recent TCMP data involving automobile expenses shown on Schedule C, Profit or (Loss) from Business or Profession, indicate that approximately 5.5 million taxpayers claimed almost \$10.6 billion in automobile expenses. Forty-eight percent of the 5.5 million taxpayers who claimed automobile expenses made errors on their returns: 1.8 million taxpayers overstated their automobile expenses by over \$1.4 billion while somewhat less than 1 million taxpayers understated deductions by \$434 million.

Another way these expenses find their way into tax returns is by way of Form 2106, Employee Business Expenses. In 1979, 5.8 million individual taxpayers claimed a total of \$10.7 billion for employee business expense deductions. (This line item includes all expenses listed on Form 2106³ which include all employee business expenses, such as automobile expenses and other traveling expenses for meals and lodging.) Of that amount, the amount of overstated deductions was \$2.8 billion. Another group of taxpayers understated their allowable expenses by \$700 million.

To summarize the Schedule C and Form 2106 data, we estimate that approximately 50% of the 11.3 million returns claiming these expenses would be subject to adjustment. While we do not have current estimates of lost revenue resulting from the overstatement of expenses, our data indicate that taxpayers claimed well over \$3 billion in excess tax benefits.

The numbers tell only part of the story. As tax administrators we must face the problems of substantiation of expenses on a daily basis. In examination after examination, our examiners are faced with records which fail to show the extent of business or personal use. Even worse, we frequently find that taxpayers simply keep no records at all. In these cases we are forced to deal with what the Joint Committee on Taxation has identified as "after-the-fact, optimistic estimates . . . based on inexact recollection." Not surprisingly, significant compliance problems continue.

In order to show you the kinds of problems IRS employees face in this area on a day-to-day basis, we contacted several of our regions for their first-hand experiences. These responses are indicative of the type of problems that are typically seen.

Example 1: During 1983-1984, this district completed examinations of 937 employees of a large corporation. These individual cases were selected because the issue

testimony); *Corr v. Commissioner*, 77 T.C. 1096 (1981) (taxpayer kept no "specific records" as to the business use of his automobiles; the lack of records prevented the court from determining the amount of the allowable deductions with reasonable accuracy); *Hynes v. Commissioner*, 74 T.C. 1266 (1980) (taxpayer's testimony unsupported by any other evidence was not sufficient to establish that the automobile expenses were incurred for business purposes); *Bussaranger v. Commissioner*, 52 T.C. 819 (1969) (taxpayer's failure to maintain mileage or expense records resulted in determination that taxpayer failed to establish extent of business usage claimed).

³ In order to better understand the portion of these adjustments that may be applicable to inadequate records relating to automobile expenses, we took a quick sample of TCMP cases and analyzed the work papers associated with these cases. This small sample shows that 70% of Form 2106 expenses that were adjusted related to automobile expenses. Further, about 40% of the adjustments were made because taxpayers were unable to show that they used their vehicles for business purposes. Although this information is based on a random sample, it should not be considered statistically precise.

was identified during the audit of the corporation. Managerial, administrative, and field employees were supplied automobiles by the corporation, which also paid all operating expenses for these vehicles. No employee recordkeeping was required by the corporation regarding personal versus business use of the automobiles. The examination issue was whether to include the fair rental value and operating expenses for the personal use of the automobiles in the gross income of the employees. As a result of these examinations the Service made adjustments in 92.6% of the cases. The average adjustment per return was \$846 and the combined total of additional assessments was \$800,000.

Example 2: Another IRS district had several large corporate cases with auto expense issues. In one instance the use of luxury autos by a company's officers resulted in adjustments of more than \$240,000. In another instance the personal use of automobiles by officers resulted in an adjustment of \$65,000. This district has at least one additional large case currently pending.

Example 3: The districts in one region identified a minimum of 1,116 cases in progress or recently closed involving taxpayers claiming 100% business use of automobiles. The region has found that, almost without exception, examinations of these returns result in adjustments to the amount claimed—usually for lack of records. Specific cases involving automobile expenses include the following:

A large corporate examination resulted in \$35,000 in additional employment taxes for the personal use of corporate automobiles by executives.

A family professional corporation claimed 100% business use of three automobiles. Our examination resulted in the disallowance of deductions for one automobile and substantial reduction in business use of the other two. The total adjustment was \$16,000.

A professional corporation claimed 100% business use of its automobiles. Our examination resulted in \$4,000 in additional tax to each of the professionals.

Example 4: A sampling of cases from another region involving automobile expense adjustments had the following results:

Amount claimed on tax return	Amount allowed after audit	Reason for adjustment
\$3,850	0	No records. Taxpayer would not reconstruct records.
1,652	1,203	Taxpayer reconstructed records; allowed in part.
2,358	0	No records. Taxpayer would not provide reconstructed records.
2,100	0	No records. Taxpayer would not reconstruct records.
2,720	0	Taxpayer could not show that expenses exceeded reimbursement.
2,938	2,850	Taxpayer had no records, but was able to reconstruct.
3,625	2,158	No records. Amount allowed based on reconstruction.
1,170	334	Do.
3,625	2,158	Do.
1,170	334	Do.
4,315	3,500	Do.

CONGRESSIONAL ACTION

In section 179 of the Tax Reform Act of 1984, Congress addressed the substantiation problem directly by amending Internal Revenue Code section 274 (D) to require that taxpayers must substantiate by "adequate contemporaneous records" any credit or deduction with respect to expenses governed by section 274, including what the code defines as "listed property."⁴ "Contemporaneous", the only new word of significance in the law, generally is taken to mean "occurring or originating during the same time". At the same time the new requirement of adequate contemporaneous records was added. Congress removed from the statute the taxpayer's ability to rely on the use of "other corroborating evidence."

According to the legislative history of the Tax Reform Act of 1984, this legislative amendment was intended to ensure that some type of record (e.g., log, diary, journal) of the business use of listed property was made at or near the time the property was so used. For example, the Ways and Means Committee's Supplemental Report 98-432, Part 2, stated that "[t]he committee understands that significant compliance

⁴ "Listed property" is defined in new Code section 280F(D)(4), and includes (among other things) passenger automobiles and any other property used as a means of transportation.

problems exist under current law due to overstatements of the proportion of business use of automobiles [and also] . . . believes that an additional measure should be provided to assist compliance and enforcement in this area." Further, the Committee stated its intentions to "elevate the standard of proof" in those instances in which a taxpayer claimed more than 50% business use.

The Senate Finance Committee's report 98-169, Volume I, noted a concern that "[M]any taxpayers may be abusing the investment tax credit, the allowance for depreciation, and the deductibility of business expenses by recharacterizing personal use of assets as business use." This abuse, the Committee stated, "undermine[d] public confidence in the fairness of the tax laws and in the ability of the Internal Revenue Service to adequately enforce those laws." Thus, the Committee recommended that only "contemporaneous records reflecting . . . [the] business and personal use of tangible property . . ." would be sufficient to substantiate deductions of credits.

The Conference Committee's report 98-861 contains perhaps the most succinct statement of Congress' intent in this area. The Conferees adopted the rule that taxpayers are required to substantiate the business use of "listed property" by adequate contemporaneous records. The Conferees expected that those records would "reflect with substantial accuracy the business use of the property." Those records, the Conferees explained, must indicate "the business purpose of the expense or use, unless . . . [that] purpose is clear from the surrounding circumstances." They also noted that with respect to automobiles, "logs recording the date of the trip and the mileage driven for business purposes must be kept."

Finally, the general explanation of the Tax Reform Act of 1984 prepared by the staff of the Joint Committee on Taxation (JCS-41-84) and released after publication of the regulations issued in October echoes the requirements noted in the Conference Committee's report especially with respect to the Congressional intent in passing the current recordkeeping requirements. The Committee staff indicated Congress' concern that "significant noncompliance under prior law . . . [resulted] from the overstatement of deductions and credits related to the business use of automobiles and other property that typically is used for personal purposes." The Joint Committee report stated the problem with "after-the-fact optimistic estimates of . . . [business] use based on inexact recollection" prompted the Congress to change the law because the "requirement of prior law that adequate records be kept was not observed uniformly." For those reasons, the Staff noted, "Congress believed that it . . . [was] appropriate to require that contemporaneous records must be kept as a condition of claiming deductions with respect to this property."

SERVICE EFFORTS TO ADMINISTER THE LAW

One of the key steps in the process of implementing any new tax law is the issuance of regulations. In this case, the IRS' temporary and proposed regulations on substantiation through "adequate contemporaneous records" appeared in the Federal Register of October 24, 1984. Generally, those regulations—

Defined the term "adequate contemporaneous record" as a log, journal, diary or other similar record.

Provided that separate entries for each use must indicate the name of the user, the date of the use, the purpose of the use, and the miles driven or time expended.

Noted that log entries were only required for the business use of the property when the personal use may be determined without the necessity for a separate entry. For example, an automobile's overall use can be determined from odometer readings at the beginning and end of each taxable year. Thus, a taxpayer's record of only business use would suffice. In all other cases, entries for each use must be made.

Stated that these log entries must be made at or near the time the property is used.

Provided that certain property used as a means of transportation is not "listed property," and thus not subject to the requirement to keep adequate contemporaneous records, because it is ordinarily not susceptible to personal use. Examples of this property include forklifts, cement mixers, and trucks designed for specific business purposes, such as a refrigerated delivery truck.

On February 20, 1985, the Service supplemented the October 24 regulations by the publication of revised temporary and proposed regulations. Generally, the regulations as supplemented permit taxpayers to satisfy the recordkeeping requirements by single entries for round trips and periods of interrupted business use. For example, a person making a series of deliveries at different locations which begins and ends at the business premises and which may include a stop at the business prem-

ises in between two deliveries, may account for these activities with a single entry in a log or other record. Likewise, a salesperson away from home for several days on a business trip may make a single entry in a log for the entire trip. *De minimis* personal use, such as a stop for lunch on the way between two business stops, is not considered any interruption in business use. Also, in the case of employer-provided automobiles, the regulations permit the employer to rely on the employee's summary statement if that statement is based on "adequate contemporaneous records".

The regulations also provide the following four special rules when the recordkeeping requirement will be eliminated or substantially reduced:

1. Farm vehicles. If a taxpayer's gross income from the business of farming exceeds 70 percent of the taxpayer's gross income from all sources (excluding passive investment income), two methods of recordkeeping are available with respect to vehicles that are regularly used directly in connection with the business of farming. The first option is that the taxpayer may keep records of the personal use of a vehicle. Alternatively, if the vehicle is designed primarily for commercial use (such as a truck) the taxpayer may treat 80 percent of the use as business use and 20 percent as personal use. With respect to any other vehicle (such as an automobile) the taxpayer may treat 70 percent as business use and 30 percent as personal use. It should be noted, however, that adequate contemporaneous records need not be kept for special-purpose farm vehicles, such as tractors and combines, since those vehicles are ordinarily not susceptible to personal use.

2. No personal use. Employers (including sole proprietorships and partnerships) who use vehicles in a trade or business need not keep logs if the vehicles are owned or leased by the employer and made available for use by one or more employees for business purposes. When not used in the employer's business, the vehicles must generally be kept on the employer's business premises. Also, the employer must have a policy against use of the vehicles for personal purposes (other than *de minimis* personal use, such as a stop for lunch).

3. Commuting. Employers (including sole proprietorships and partnerships) who for business reasons require employees to use business vehicles for commuting are generally not subject to the recordkeeping requirement so long as the only personal use of the vehicles is for commuting (other than *de minimis* personal use such as a stop for lunch or a stop for a personal errand on the way home), such use is not by an officer or one-percent owner of the employer, and amounts are included in employees' income to reflect the use of vehicles for commuting.

4. Sales and service. Taxpayers who spend most of a normal business day using a vehicle to make several stops in connection with the employer's business, for example, to call on customers or clients, to make deliveries, or to visit job sites, may satisfy the recordkeeping requirement in one of two ways. First, they may keep records of the personal use of a vehicle. Alternatively, if the vehicle is an automobile (or otherwise designed primarily for personal use) the taxpayer may treat 70% of the use as business use and 30% as personal use. If he vehicle is designed primarily for commercial use, the taxpayer may treat 80% of the use as business use and 20% as personal use. However, these rules are not available to taxpayers who customarily spend most of a normal business day in an office or similar setting.

COMMENTS AND THE REGULATORY PROCESS

We always invite taxpayers to provide the Service with written comments on proposed regulations. The information provided by the comment process generally enables us to improve and refine regulations before they become final. In this instance, our normal procedures of publishing proposed regulations and receiving comments prior to issuance of final regulations was not followed because of the need for immediate guidance to taxpayers. As a result, the regulations at issue are in both proposed and temporary form. We urge the public to provide us with comments by April 8, 1985. In addition, a public hearing on these regulations has been scheduled for April 16, 17, and 18.

CONCLUSION

Mr. Chairman, today I have attempted to demonstrate that the Service's initial temporary and proposed regulations requiring substantiation of a deduction or credit by "adequate contemporaneous records" were an accurate interpretation of the law and of the Congressional intent. We believe that a fair reading of the legislation history and the Joint Committee Explanation confirms our judgment.

As you debate this issue, I would hope that you keep the fundamentals of good tax administration clearly in mind. As you are aware, the income tax system in this country is based on voluntary self-assessment. We depend on taxpayers to honestly

and accurately assess their tax liabilities and, for the most part, taxpayers justify the faith that we place in them.

If we expect taxpayers to continue to warrant our faith, we must endeavor to assure them that the system works and the system is fair. If taxpayers lose their respect for the system we can expect serious consequences in the area of voluntary compliance.

The issue of personal use of business property has never been one of pure tax revenues. Instead, it is an issue that is driven by questions of fairness. The average taxpayer sees the lawyer, doctor, or accountant (and I am a member of two of those professions) drive to the Kennedy Center in a luxury automobile paid for with tax deductible dollars. To the extent that our substantiation rules permit highly visible abusive case to exist, we will see the consequences.

While I recognize the burdens associated with recordkeeping, I see no realistic alternative to the maintenance of records. Records not only enable the tax administrator to perform its function, but also assure that taxpayers will receive the full amount of tax benefits to which they are entitled.

My associates and I will be pleased to try to answer any questions you or the other Members may have.

Chairman ROSTENKOWSKI. Thank you, Mr. Commissioner.

Some people seem to believe that the level of compliance with prior law was low. Was this a problem of inadequate resources for the Internal Revenue Service or a lack of focus by the Service? Or was the problem with basic statutory provisions?

Mr. EGGER. Well, I think it is a little of all three of those, Mr. Chairman. I think in view of the effort to reduce the costs of Government, we have reduced the resources placed in the enforcement areas to a minimum, and we are auditing fewer tax returns percentage-wise than we have in the past. By the same token, a part of the problem, and a very large part of the problem that we encounter in this particular instance, is the lack of any kind of records. Time after time, our examiners go out to examine the tax return and find that the taxpayer does not have anything except an estimate of some sort. And then they sit and pour over diaries and a whole lot of other things trying to arrive at a satisfactory conclusion. Whereas, if the taxpayer had records, a reasonable review of those records could ascertain that they are adequate and then they could be accepted.

Chairman ROSTENKOWSKI. You observed the reaction this morning, Mr. Commissioner. The clarion call here is to repeal even what existed prior to these regulations.

Actually, I had the worst Christmas of my life. Evidently the accountants told everybody around December 1 about the records that had to be kept. I could not go anywhere during the Christmas holidays where I was not almost physically attacked about the proposed regulations.

I am sure that the committee will review this and be sensitive about the Treasury's problems. However, I think that if a repeal bill was reported to the House floor tomorrow, it would pass overwhelmingly. And that, of course, is what your concern is.

Mr. EGGER. I think what I am saying is that repeal does not solve the problem. It may lull the public into some kind of quietude, but it is not going to solve the problem. It is still with us. We have still got the difficulty of ascertaining that a deduction is the proper deduction.

Chairman ROSTENKOWSKI. Secretary Pearlman, are there any revenue estimates with respect to the additional compliance anti-

pated by these regulations? Are there any estimates of the revenue that could be picked up?

Mr. PEARLMAN. Are you saying under the law as enacted?

Chairman ROSTENKOWSKI. Yes.

Mr. PEARLMAN. In 1984?

Chairman ROSTENKOWSKI. As presently interpreted.

Mr. PEARLMAN. We are trying to do a revenue estimate now, Mr. Chairman. We are trying to go back and assume we were to repeal, go back to pre-1984 from the current regulations. And we have not finished that. But my guess is that that revenue will be somewhere between \$100 and \$200 million a year, although we just do not have a number at this point.

Chairman ROSTENKOWSKI. That is a lot of aggravation for that kind of money.

Mr. PEARLMAN. I do not think this is just a revenue issue. Let me say that I think that hopefully both the Commissioner and I have conveyed as much of the concern that is being expressed by others because we are sensitive to that. And we cannot cavalierly sit here and say simply because people are upset, that we are going to duck our heads in the sands and not listen to that. We are sensitive and we try to reflect that in the changes we made in the regulations and, hopefully, we have reflected that in our comments this morning.

Unfortunately, not too many people come and say, hey, there is another side, and I think we have a commitment to do that. But this is much more than a revenue issue. I think this is another one of the areas in the tax law where we talk about the problem of fairness and perception and how people perceive the tax law operating.

Chairman ROSTENKOWSKI. I admit, Mr. Secretary, that when people discussed with me the new recordkeeping requirements under your proposed regulations, I was surprised with the lack of understanding on the part of taxpayers with regard to prior recordkeeping requirements. That really surprised me. So I can understand, Mr. Commissioner, what your problems are.

Mr. Commissioner, on another subject—and I know that my staff suggested to your staff that I would ask this question because it has been posed to me.

Mr. Commissioner, the proposed regulations on airplanes would value the use of a company plane on a personal trip as the value of chartering an equivalent aircraft.

Did you consider any less onerous valuation standards and, if so, could you explain your reasons for rejecting them?

I have been asked by many people in the corporate world about the three times first-class fare valuation rule and the effect of a spouse's travel or the spouse of a corporate executive. Would you explain that?

Mr. EGGER. Right. The decision to use the charter rate as the amount of income to be attributed to the user of the company airplane was made simply because if the individual went out to a commercial airport and chartered an airplane to take him from one place to the other, that is the price he would pay. And those figures are pretty well known. And mind you, we only apply that in

the case where the trip is purely a personal trip and not a business trip.

In all of the business trip cases, to the extent there is any personal use concurrently with the business use of the aircraft, we use either a multiple of the first-class fare in some cases or coach fare.

Mr. RANGEL. I am sorry. If the business plane is on a business trip and there is an empty seat. And the person that occupies the personal seat is traveling for personal reasons, is that when that—

Mr. EGGER. That is coach fare. We call it the hitchhiker situation, and in any case where the person goes for purely personal reasons because the plane is going there anyway, then the most that is attributed to them is coach fare.

Mr. RANGEL. I see.

Mr. PEARLMAN. Leaving this question of valuation, leaving the question of the dollar amount of the valuation aside, it is fairly clear, Mr. Rangel, that you have to look at the value of the benefit to the person receiving it. And then you get into the question of how much that value is.

We have heard, as I presume you have from your question, comments about the valuation in the airplane area. And I think that is a good thing about the regulations process. People are commenting. We have had people come in from the industry and from businesses that use corporate aircraft, and they have submitted comments. And they are going to testify at that hearing. And that is an area obviously that we are going to have to look at.

Mr. EGGER. I would hope that people will give us their comments.

I had occasion to meet with several of the Members over here a few weeks back, and that is exactly what I explained to them at the time, by all means we want that comment. That is the whole point of the comment period and the hearings. And we are delighted to have any information that they can give us.

And those areas can be reconsidered. They are not set in concrete.

Chairman ROSTENKOWSKI. I am glad to hear that.

Mr. Gibbons will inquire.

Mr. GIBBONS [presiding]. I realize we have got a serious problem on our hands. And like the chairman, it was rather visible at Christmas with all the people asking you over and over again when are you going to get rid of this terrible intrusion upon my privacy?

And something that I have enjoyed most of my business life, and it takes an exorbitant amount of time to explain to them all the things that you covered here. And when you get through explaining them, it does not do any good.

One constituent came up with an idea that I will just try it on you because he asked me to, and that is that you make this a self-enforcement, give them a safe haven, sell them a bumper sticker or something to put on the back of their car, "This car is being used for business purposes." And if they display that bumper sticker prominently and permanently on their car, they have got a safe haven. It is self-enforcing then, you know.

Did you ever think about doing anything like that?

Mr. EGGER. I would imagine there—

Mr. GIBBONS. It could be a pretty bumper sticker, red, white, and blue, and this car is at work and so am I, and—

[Laughter.]

Mr. EGGER. I can believe, Mr. Gibbons, there would be a fairly good market for those bumper stickers.

Mr. GIBBONS. Well, it would make it very easy then to check. You could just go to the golf club on the weekend and take down the bumper stickers, and it would be a lot easier. They would not have to keep all their contemporaneous records. It would be a self-enforcing type thing.

If the car was not actually being used for business purpose, I am sure then they would leave it in the garage.

Did you give any kind of consideration before you drew these very complex regulations to my constituent's simple suggestion? Did you ever think about that?

Mr. EGGER. Not really. [Laughter.]

Mr. GIBBONS. I will not comment further then.

But obviously we have got a problem that must be solved.

Mr. EGGER. I appreciate that.

Mr. GIBBONS. Thank you very much.

Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Have you made any estimate of the number of taxpayers who may be exempted from the recordkeeping requirements as a result of the recent Treasury modification?

In addition, could you indicate the number of taxpayers you think would still be required to keep records as compared with the number who were claiming automobile expense deductions in 1984?

Mr. EGGER. Mr. Pearlman, would you like to reply?

Mr. PEARLMAN. Mr. Duncan, the first part of your question, and that is the number of people who might be excluded from the recordkeeping rules as a result of the revised regulations, obviously is a tough one to get a handle on.

The best estimate, and it is only an estimate at this point, is approximately 75 percent of the taxpayers who would either use cars that are eligible for deductions for business use or who owned cars for which they take deductions, I think we will get a better handle on that number as the hearing process continues, that is, as people come in and tell us what problems they have and what kind of employee groups are still impacted by the rules.

But our judgment is that it is a very substantial percentage. I say as best we can tell at this point, it is approximately 75 percent.

Mr. EGGER. Many of the ones who would qualify under our safe haven rules that are in the temporary regulations are the big fleet operators and involve very large numbers of individuals using automobiles. So we think it is a fairly sizable number.

Mr. DUNCAN. Have you given any thought or did you give any thought to exempting—you were talking about the large fleet operators—companies or individuals who have just one car, three or four cars?

Mr. PEARLMAN. I think one of the misimpressions of this regulation is that the rules that exempt large fleet operators do not exempt people with one car or several cars as well. It is not a large business versus small business rule.

Now, one can quarrel about whether the safe harbors go far enough. And people have told us they do not. But, for example, the safe harbor that says that if you use your car most of the time in your business in making deliveries; for example, a salesman or a service person works for an office equipment company, someone like that, it does not make any difference whether they are self-employed or whether they work for the largest company in the world. They have that safe harbor available to them.

So we did not try to draw distinctions between large businesses and small businesses, or businesses with a few cars or a thousand cars. And they apply equally to all of those people.

Mr. DUNCAN. But you did single out the fleet operators?

Mr. PEARLMAN. No, we really did not.

I think what the Commissioner—and I do not want to put words in his mouth—was saying is that many of the criticisms we got were from people who were employees of businesses that have large numbers of salesmen. For example, utility companies with large numbers of people who use company cars every day to service the customers of the utility company.

But we did not draw a fleet company rule. The only rule in this regulation that seeks to draw that kind of line is the safe harbor rule in terms of commuting value. And it puts a restriction on what we think is a very favorable rule on how much someone include in income if they wish on an elective basis as the value of commuting. And it is restricted so it does not pick up the chief executives and the higher compensated employees of larger or smaller companies. But we did not make a large versus small company distinction.

Mr. DUNCAN. Have you thought about the reason you did not get complaints from the smaller people, like the carpenter or the painter who goes out in his own? You just did not have the facilities to hear complaints.

Mr. PEARLMAN. Well, I would hope, Mr. Duncan, that we dealt with a lot of those people. Maybe they do not realize it at this point, but I hope our safe harbor rules have dealt with those and have relaxed the rules for those people.

But I think that is part of the educational process. I think we have got to continue to learn and make sure that we are sensitive that people—I think what we should all want to get are people who really are legitimately using their cars in their businesses and their occupations, and their general pattern of operation would document that, to try to relax the recordkeeping for them as much as we possibly can.

Mr. DUNCAN. Fine.

Commissioner Egger, have you made any estimate of the impact which the new automobile recordkeeping rules are going to have on the IRS workload?

Mr. EGGER. Well, it should make our examination process a great deal easier, Mr. Duncan. As things stand now, when we go out to examine returns that have that issue on them, we are typically having to pour over a great many disjointed types of records, such as appointment books or diaries or, for that matter, just kind of nondescript things, simply because the taxpayers do not keep an orderly set of records, or they have no records at all. They merely

estimate what percentage they use their car for business, and then it becomes a debate back and forth of whether any estimate is anywhere near right.

The records should save us considerable time in our examination process.

Mr. DUNCAN. Has the IRS done any estimate of the extent to which you believe the taxpayers were overreporting car expense deductions under the prior law?

Mr. EGGER. Yes. In my testimony, I just finished saying we did not have a national nationwide project, but that putting together the schedule C data from our TCMP surveys and the 2106 information together with current experience in the exam process leads us to think that it is somewhere around \$3 billion a year.

Mr. DUNCAN. Have you explored the extent to which really a more vigorous audit coverage could be used as a substitute for the changes that were made in the 1984 act? In other words, could we achieve the same benefits requiring taxpayers to substantiate their automobile deduction by making audit changes or modifying the ways in which the tax forms currently provide for the reporting of deductions? Could we do the same thing in some other way?

Mr. EGGER. I think that the answer to it clearly lies in this sense, that if we expanded our audit coverage in this particular area, it would clearly involve collecting larger amounts of revenue and doing away with some of this overstatement. But I think there is a very definite cost benefit to be looked at here from the standpoint of how we use the limited resources.

Mr. DUNCAN. How about modifying the form, the tax form itself?

Mr. EGGER. We take a very hard look at each and every line item and each and every item of deduction on those return forms every single year. We hold hearings around the country to get input from the public as well as from professionals. We make every effort to see whether there is some way that we can improve the forms.

I do not know if we have had any particular project to look precisely at this issue. But we would certainly be glad to do it.

Mr. DUNCAN. I thank you both. And thank you, Mr. Chairman.

Mr. FORD [presiding]. The Chair will recognize Mr. Anthony.

Mr. ANTHONY. Thank you, Mr. Chairman.

Commissioner Egger, before I ask any questions, I would like to say a word of thanks. I have been watching your public service programs regarding tax forms and I think it is extremely well done. You are to be commended for it. I think the public is benefiting from this service and hope it will be continued.

Mr. EGGER. Thank you.

Mr. ANTHONY. And I would also, to both of you, like to commend you for the attitude which you displayed when you came in here.

The first comment I made to my friend, Mr. Flipppo, is that even under these adverse conditions, at least Mr. Pearlman came in with a sense of humor.

But throughout your testimony you acknowledge that there has been problems for 20 years; that there were some changes made in 1984, and that you have heard from Members of Congress regarding the public outcry as to the proposed IRS regulations.

Your attitude has been one of compromise and I think, is very beneficial to the process. And I want to thank you for that.

My personal position would be that we should go ahead and repeal this section. And the reason I am for repeal is not that I want to go back to abuses in the Tax Code. I think what we have done, No. 1, is brought enough attention to this noncompliance problem that everybody out in corporate America has started to clean up their act.

I have had two comments as I have gone around my district and around the country.

One is total outrage from small businessman. People walking up and saying this is ridiculous, I am not going to do it, if you have to you can just throw me in jail, I am just absolutely horrified by it. And you try to rationally explain to them the rationale behind these regulations. And they say, look, I do not want to abuse the law, I just want more reasonable reporting requirements.

On the other hand, corporation executives admit they could not risk an audit, and if it were audited would have to pay additional taxes.

I think what we have done by highlighting this issue is force a lot of companies to go in and reexamine their own operation. And they have cleaned up, many abuses. I think what we are down to now is trying to find some way to help those people who are truly using these vehicles for business from being overburdened with regulations.

I guess I have two problems with anything other than total repeal. One, the admission that we have had a noncompliance problem for 20 years and did nothing about it; and, two, the word "contemporaneous."

Maybe we could go back and use a more liberalized version of contemporaneous. Contemporaneous maybe being every 6 months.

All you really need to do is require taxpayers to keep sufficient enough records so that IRS creditors can easily check for accuracy and compliance.

I think we have got to compromise with taxpayers so that they do not feel like they are terribly overburdened.

So what I would suggest is that we go ahead and repeal this section, tell the public that we heard you, and go back to the old law. At the same time we need to stress the point that some form of records will have to be kept. Logs, calendar, diaries, and other materials recognized by courts should also be allowed as evidence.

So I would encourage you to keep thinking in these terms.

In my final few seconds, I would like to touch on a couple of other areas.

I happen to come from a very rural section of the country. We have a lot of oil and gas well servicing people. They are not driving Mercedes and they are not driving Jaguars. They are driving these big old ugly looking vehicles that have got a lot of equipment in back of them. But because of where these wells are located, they take these vehicles at home at night.

Now, under your current new regulation, they are still going to have to pay \$3 a day for commuting. That just does not make a lot of sense.

These are people who, if they do not commute, and if they leave their trucks out in the oil fields will have to hop in their pickup

truck and rush 40 miles to the oil field to get in this other truck. Then possibly turn around and go back from where they just left.

This sounds like an exaggerated situation. However, it is typical in my part of the country. This can also take place with electricians and plumbers. I have received a very articulate letter from a veterinarian in northwest Arkansas who talked about this very same problem.

I would hope you will take a hard look at those situations and work in trying to bring some practical approach to these costs.

Mr. EGGER. I think the commuting rules are some of the most difficult to wrestle with because of all of the examples that one can come up with, whether it is the power company that sends the company car home with the troubleshooter who may have to go out in the middle of the night in a thunderstorm and fix a hot wire, or whether it is the local policeman who takes the cruiser home and it sits on the curb in front of a house as a deterrent. There are so many of those.

But the plain facts are that each and every instance involves the cost of commuting. And in the final analysis, it is a question of whether you allow a deduction for commuting. Nobody else can get it. And if you have—

Mr. ANTHONY. I have a solution to that.

Rather than saying it has to be the employer's place of business, let the employer establish two places of locking his vehicle up. Let the employer take the vehicle home and lock it up in his driveway, without being taxed, with the understanding that he not get in it and drive all over town. I do not know of a lot of people who would want to go on a vacation in an oil well rig anyway. Maybe you had better come down and take a look at them and see what they look like.

I think we can and should establish some new definitions regarding commuting.

Mr. EGGER. I appreciate your point, and I am very, very conscious of it. But the fact remains that this person gets back and forth from work to home on a before-tax basis, whereas his neighbor gets to and from his job on an after-tax basis.

Mr. ANTHONY. What would be the cost of just totally repealing commuting costs and saying that commuting cost is part of doing business, which it actually is?

Mr. PEARLMAN. Remember, when you start talking about commuting that way, you are then talking about the deductibility of bus fares, cab fares. It is not just vehicles.

One of the problems with the whole issue of commuting, and as you point out, Mr. Anthony, it is a tough issue, it is conceptually a tough issue.

Mr. ANTHONY. What would be the cost if we let everybody do it? I am not opposed to it. I think the Secretary ought to have the right to deduct their expenses as much as the president of the company.

Mr. PEARLMAN. I could not begin to estimate that without going back and doing some homework.

I just wanted to point out the issue is much broader than just driving a car back and forth. We are talking about a lot more people than that.

Mr. ANTHONY. I agree. And I want to tell you that I am in support of them too. I am not just trying to take care of the electricians and the plumbers and the oil field worker. I think they have got a good case, and we ought to take a hard look at it and see if we can change the code to make that some type of a nontaxable fringe benefit and/or an ordinary business expense.

I would like to see some numbers generated to see what the cost is. This would have to be considered a true level playing field, and we would not have the necessity for all these hearings. We would not be talking about the corporate president flying all over the country in his private jet, and somebody down below saying, well, I am going to cheat on my tax code in order to equalize it. What we would be doing then is saying—it is a normal part of doing business.

I yield back.

Mr. FORD. The time of the gentleman has expired.

The Chair would recognize Mr. Jones.

Mr. JONES. Let Mr. Flipppo go ahead.

Mr. FORD. The Chair will recognize Mr. Flipppo.

Mr. FLIPPO. Thank you very much, Mr. Chairman.

Mr. Commissioner, I think that it has been brought to the attention of the committee that we did have a continuing problem prior to the enactment of this contemporary record's requirement in 1984. But it seems that the solution that was attempted creates other significant problems, perhaps impinging on other public policy measures such as positing public service areas to be taxed under additional compensation, under emergency vehicles, and some of those public service and public policy measures.

And it also appears that the newly implemented regulations are very complex since it took more than a hundred pages to explain that refinement. It also appears that we are requiring tax preparers to do things in regard to this particular deduction that we do not require in regard to other deductions on the return.

So, indeed, we do have some problems that the measure attempted to solve but created significantly other problems.

There is one area I want to examine with you very briefly, and that is before the passage of the 1984 act, the agency, I believe, did have the authority to require adequate substantiation to uphold any claims for business deductions. And in some cases I believe that even included contemporaneous records in the case of meals, for example, where that was consistent with normal practice. In other areas, you used reasonable reconstruction method to substantiate these expenses.

But if we repeal this law, you will not have any less authority than you did before we implemented this, will you?

Mr. EGGER. Yes. Yes, Mr. Flipppo, we will because, as we pointed out in the testimony, local transportation is covered not under section 274(d), which does give us some authority with respect to recordkeeping requirements, but rather falls under section 162 where the guidance in the statute itself is very vague as to just what we can and cannot require. I think if we were to begin to rewrite the regulations under 162 for the purpose of requiring some sort of recordkeeping here, we would probably be back up here again for another hearing.

So I feel that we do not have sufficient statutory authority under section 162 to do what this statute does.

Mr. FLIPPO. Well, is it possible that we could just simply reverse everything we did in 1984 into this area? Why can we not do that? Why can we not go back to where we were before we passed this section?

Mr. PEARLMAN. Mr. Flippo, obviously you can do that. Indeed, I guess that is what the repeal proposal suggests. But I think you have to put yourself in the shoes of both taxpayers and in the shoes of people at the Service. What would the reaction to that be? What would the impression be when the statute says contemporaneous records and the Congress repeals that? Does that now mean that people do not have to keep records? Does it mean that they can create records at the end of the year?

The reason I made the comment I did during my statement, if the issue does not go away, is that I think that Congress and Treasury and the Service have to make a judgment about what kind of recordkeeping requirements are appropriate and tolerable to the American taxpayer. I think that is an appropriate issue for the Congress to debate and discuss. But that issue really is not resolved by simply repealing current law, without something more, without giving some guidance. That issue is going to be there.

Mr. FLIPPO. I understand that the repealer would not solve the problem. But it would not make the problem, I think—I think it is hard for me to understand how a repealer of what was passed in 1984 would make the situation more difficult than what it was before.

And let me point out, too, I do not believe that Congress really intended for this portion to be enacted anyway. At least, this Congressman did not intend for it to be. And there was not a debate in Congress as to this proposed solution to this problem.

And so I think I would like to go back to where we were before we passed this revision in 1984 as a good starting place to address the problems that you say we have. While this solved a good deal of IRS's audit problems, it certainly did it at greater expense in other areas and transferred the cost of compliance and perhaps multiplied it greatly.

So I just think that perhaps we ought to go back to where we were before we passed this in 1984, and then let us really have a congressional debate and an IRS debate with the business community and private sector participating. Let us have a debate on how to deal with this problem, to come with solution. But I believe the solution, the cure is far worse than the problem that we have.

If this is an example of a solution, I think I would rather go back and deal with that uncertainty.

Mr. EGGER. Well, let me echo what Assistant Secretary Pearlman has said, and that is having put this in the law, and with the regulations out there, and all the debate that has gone on to date, if the Congress repeals this now, it will send a signal to taxpayers that they do not really have to keep records. I cannot come to any other conclusion except that.

Mr. FLIPPO. Well, I do not think that I would agree with your conclusions. I think that this act is sending a message to the American taxpayer that the tax law is unreasonable in its application,

and I think it does far more damage to a voluntary system than to say to the American people the solution that we have offered is unacceptable, and we are willing to reexamine the issue to find a more acceptable solution that contributes to overall compliance.

Mr. EGGER. Let me suggest to you, Mr. Flipppo, that in our hearings that are coming up in April, we hope that there will be a lot of debate, a lot of discussion about the specifics in those regulations. If there is a better way to do it, then pretty clearly we want to do it.

I think you and I could agree that we have to have some sort of records of people's business use versus personal use in the case of mixed use assets as automobiles.

The question really is what kind of record should be kept—how extensive and so on. That the regulations hearings are an excellent forum for that kind of debate.

Mr. FORD. Mr. Jones, any questions?

Mr. JONES. Thank you, Mr. Chairman. I can appreciate, Mr. Pearlman's and Mr. Egger's need to defend their regulations, but I must agree with what has been said, that the cost-effectiveness of this regulation is not such that we ought to keep it, nor is it worth the irritation factor that is all over this country.

As I understand the testimony today, the amount of revenue that we are talking about amounts to about one one-hundredth of 1 percent of personal income tax receipts. You estimate those taxpayers who overstate their expenses, auto expenses, come to about \$1.4 billion in lost revenues, those who understate about a half billion in gained revenues—so you have got about a billion dollar loss.

You have not zeroed in on what this cost will be to business. Some businesses would testify that the additional expense, in keeping these kinds of records, would come to maybe a billion or more, much of which would be tax deductible. So I am not sure that there would be any cost-effectiveness to this regulation.

What it seems we are talking about is a question of fact. We could probably come up with language that requires the taxpayer to substantiate, as a matter of fact, the deductions he or she is taking on the use of an automobile, without having this detailed record requirement. I have not concluded from the testimony today, that you are going to increase the number of audits. Presumably, the audits will remain about the same. It is just a question of whether, on those audits, the question of fact can be substantiated.

I submit to you—even though I know you have to defend your position—that that position is far out of step with the irritation it is causing in the country, and far out of step with what the majority view in Congress is.

I would like to ask you specifically, in the part about vehicles used only for business purposes, you have a "safe harbor" test, but you deny the exemption for contemporaneous recordkeeping when the employee lives at the employer's business premises.

What is the purpose of that? Who is that intended to affect?

Mr. EGGER. I think I am a little confused by the excerpts there, but are you talking about the—

Mr. JONES. All right. Under the 5 point test, this pertains to vehicles used only for business purposes, and, "No employee using

the vehicle lives at the employer's business premises." That is the fifth point.

Why are you denying the exemption, if the employee lives at the employer's business premises? Who is that intended to affect?

Mr. EGGER. Well, I think in that case what we are saying is, where the employer has an automobile that is used solely in the employer's business, and the individual or individuals who use that automobile, use it only in the employer's business, and then leave it at the employer's premises, then we do not require any record-keeping on those cars that fit that category.

But the problem is that we wanted to avoid the situation where we would have either individuals, or small businesses, or large businesses, say that, "Well, my home is my business in part, and so therefore, I am keeping the car on the employer's premises." In other words, we are trying to avoid any gaming in the system.

Mr. JONES. So you do not know, particularly, the category of people who are cheating, or who are gaming on the system would be?

Mr. PEARLMAN. Well, we know that there are people that can claim that they work out of their home. They may not. They may not meet the Internal Revenue Code standards of having an office in the home.

Mr. JONES. But if they do, they are automatically excluded from this "safe harbor" under point 5 of those regulations, if they live and work out of their home?

Mr. EGGER. I am just not sure about that, Mr. Jones, and we will look at it.

Mr. JONES. OK. On the personal use of a vehicle limited to commuting use, again you have five points. On point 2, you say "For bona fide non-compensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle."

Who qualifies under this? For example, would this include a public utilities serviceman?

Mr. PEARLMAN. It would cover the utility employee. It would cover some telephone, local telephone companies require their employees to take cars home because they do not keep them at their premises, in other words, for the security of the vehicle.

It would cover emergency vehicle people who have—

Mr. JONES. Are the oil field workers that Mr. Anthony referred to?

Mr. PEARLMAN. So I think you would cover anyone who an employer says the car is not being taken home. It would certainly cover Mr. Anthony's situation, where the employer says legitimately, "We are not giving you this car to take home to be used for personal reasons. There is a real business reason to take the vehicle home." And what that was intended to do was simply set a "safe harbor." It was simply to say, "If you choose to value your commuting at three dollars"—which incidentally, most people have told us is not an extraordinary amount to value the cost of travel these days. It is optional with the taxpayer.

If the taxpayer believes his commuting costs are less than that, he has certainly got the ability to include a lesser amount.

Mr. EGGER. We are told by a lot of employers that simply as a cost factor, they would rather the employees take the cars home, rather than spend the money to provide garage space, and security, and all that.

Mr. JONES. My final question in trying to understand how you arrived at these revised regulations concerns the use of the vehicle for farming purposes, or farming business.

You have the 70-percent rule to define the use of a vehicle in connection with farm businesses.

Is the 70 percent a magic number that relates to some other part of the law, how did you arrive at that?

Mr. EGGER. The idea was to identify those people whose principal occupation was operating that farm, as distinguished from doing something else, and then having a farm as kind of a side venture. We did not intend to include the latter in the "safe harbor" rules.

Mr. PEARLMAN. Mr. Jones, the criticism we got were from people who were full-time farmers, and they told us, and we discussed percentages with the representatives of those farm groups, and they told us, what they were trying to do was deal with the person who really was a farmer. That was his full occupation, and so we tried—

Mr. JONES. Your revised rules may clear this up, and an awful lot of small, so-called family farmers, are making less than 50 percent of their gross income from farming and yet spend a great deal of time on the farm.

Now as I understand that, if it was less than 70 percent of their gross income, and they had tractors and other purely farm vehicles, they would still have to keep detailed logs on that tractor. Is that right?

Mr. PEARLMAN. Well, a point was made earlier about tractors. Tractors are not covered by these regulations today, so they are just not in issue here. There are no recordkeeping rules with respect to tractors. There are no other valuation rules. They are what we refer to as "special use equipment" and they are excluded from these rules.

Mr. JONES. Threshers, the same way?

Mr. PEARLMAN. I am sorry, I—

Mr. JONES. All right. Pickup trucks?

Mr. PEARLMAN. Pickup trucks might be. It depends. It depends on whether they are specially outfitted, or whether they are just suitable for personal travel.

Mr. JONES. I think all this points out that we would be a lot better off, probably financially, and every other way, if we allowed those 1 percent, or however many people you audit, to establish as a matter of fact, whether they are or are not using this, rather than having everybody keep such detailed records.

I have not been persuaded, although I appreciate the cause you are pursuing. Thank you.

Mr. FORD. Mr. Frenzel.

Mr. FRENZEL. Thank you, Mr. Chairman. I thought you had forgotten that we were active over on this side.

Mr. FORD. No, Mr. Frenzel. The Chair was just really counting the members on this side of those members who are here, plus Mr. Jones will have to relieve the Chair around 12:30.

Mr. FRENZEL. It is nice to know we get 1 out of 4 over here, Mr. Chairman.

Mr. FORD. One out of three, Mr. Frenzel.

Mr. FRENZEL. Well, you had three in a row. I think I am the fourth.

I want to thank the witnesses for their testimony, and tell them that the committee looks forward to working with them on correcting what most Americans believe are a pretty silly set of rules.

Apparently you are willing to help us get ourselves out of the predicament which is not necessarily yours, but which we encouraged with the passage of the 1984 law. I would like to state for the record that while it is fun to "beat up" on the IRS, clearly the Deficit Reduction Act of 1984 gave you some obligations which you felt you had to carry out.

However, I like to beat up on you as much as anybody else, so I have got to say I do not think you carried them out very well, but certainly, the original fault was ours.

Is the word "contemporaneous" the principal problem?

Mr. PEARLMAN. Mr. Frenzel, I do not think the word "contemporaneous" is the problem. In retrospect, it is my judgment that had the conference report not said "log," or had we ignored the word "log" in putting out the original regulations, and we had simply said to people, "Your records have to be contemporaneous—that is, they have to have some relationship to the time in which a vehicle is used, and you can do it by appointment book, or calendar, or something else," that we would not be sitting here. And that is why—and that may be the wrong judgment, but that is why I made the statement before, that I think the issue is not with the word "contemporaneous."

The issue is with the level of detail of records, and, it seems to me that we can deal with that, and that "log" may not be the right answer, in any circumstance, but that that is an issue that we can, and we should, appropriately deal with.

Mr. FRENZEL. Good. I think our duty goes beyond repealing and repenting it, too. I think we have to repeal and improve, I think.

You talked about your "safe harbor" rule. There are people in my area who think the 70/30 rule is pretty extreme. Where did you find those numbers? Did they come from heaven in a stunning flash of light?

Mr. EGGER. No. I think it was a little more scientific than that. We took a hard look at what the usual ratio is of business versus personal use on the basis of experience in auditing thousands of returns with this issue in it, and so it is based on fairly indepth experience, and we felt that was about right.

We are happy to have more specific information that will help us find a better answer, if there is any.

Mr. FRENZEL. Yes, and I realize that every case is different.

Mr. PEARLMAN. Mr. Frenzel, let me just add something to that. The preamble to these regulations raised the possibility of permitting taxpayers to come in on an individual basis, and through use of sampling techniques demonstrate that the percentage applicable to them should be different.

So I think the Revenue Service recognized that there is no magic in any percentage at the outset, and that prospect is still out there, that that well may be—

Mr. FRENZEL. Yes. I think that is one of your rules which could stand a little improvement. As I told the Secretary of the Treasury the other day, I am not one who holds simplicity as the prime goal of a tax system; but we do want to avoid foolish recordkeeping which is not necessarily productive. I think that is one of the areas we can probably stand a little work.

I thank the Secretary and the Commissioner for their testimony, and like the gentleman from Arkansas, I applaud their willingness to help us solve the problem.

Mr. FORD. Mr. Guarini.

Mr. GUARINI. Thank you, Mr. Chairman. I want to thank both of you gentlemen, for your efforts. There is no question that we do want to get rid of the tax cheats. At the same time we talk about simplifying our tax laws. What this law really points out, is the inadequacy of our conference system.

I do not think most of the Members of the House knew when the conference report which is about 1,100 pages long came back, all the details of what was put in to it when the conferees met.

They had very little time to even go through the 1,100 page report. So I feel that the intent of Congress was really not expressed because I doubt whether anybody ever even knew what was in it when they voted on it.

But let me just make a comment and show the difficulty of the problem. When you spoke of contemporary records, you said "more or less contemporary records should be kept." I think you even recognize the fact, that there is a problem there in enforcement, costs of investigation, costs of recordkeeping on the part of our taxpayers.

Mr. Jones talked about farmers. Now there is no place in that new law that mandated treating farmers differently, is there?

Was that not a throwback to a provision that long existed in the law, that allowed you to make four exceptions in your regulation?

Mr. EGGER. Yes. I do not think we made the exceptions solely because they are farmers versus some other occupation. It was done to recognize the peculiar problems that farmers have, that other people do not.

Mr. GUARINI. Right. But in the mandate to keep contemporary records farmers were not even referred to, were they?

Mr. EGGER. That is correct.

Mr. GUARINI. You just dug back in to the past and pulled out a provision from the code, and said, "Well, we are going to make several exceptions because there are special interest groups that should be given some consideration, and we are arbitrarily making it 80/20 if he uses the car 70 percent of the time in farming."

More or less, that is a very arbitrary figure and an arbitrary regulation. Is that true?

Mr. EGGER. The 80/20 is not arbitrary. We have already explained how we arrived at the 80/20 or the 70/30. The 70/30 has to do with automobiles and vehicles which are designed for personal use and the 80/20 applies to vehicles primarily designed for commercial use.

Mr. GUARINI. Right. But the 70 percent was arbitrary?

Mr. EGGER. Neither of them were arbitrary. They were intended to try and be as responsive to the situation as we found it.

Mr. GUARINI. Yes. Is it not a fact that many of—

Mr. EGGER. And we have already explained that.

Mr. GUARINI. Yes. But is it not a fact that many of our tax laws are arbitrary in the first place, and averaging out? We say the life of a building was 30 years under the pre-1981 code.

Some people build buildings for 20 years, and some that last 50 and 70 years. It was arbitrary, when we would take depreciation allowances. And ACRS, is that not an arbitrary figure, that we sort of put on, for depreciation, in terms of the life of the various pieces of equipment?

Mr. PEARLMAN. Mr. Guarini, any time you set mechanical rules, the way you are using the term, sure, they are arbitrary.

We could have said 65 percent, or 75. I think what the Commissioner is really trying to say is, that they did not pull it out of the air. They tried to use the data they had to arrive at those percentages.

But certainly, in developing these regulations, as we do normally in the regulations process, if Congress gives us the discretion to exercise judgment in developing regulations, we do, and we did that here. Sure.

Mr. GUARINI. All right. Well, in this case we are trying to be purist in regard to some people, and we are arbitrary in regard to others in the same regulation. Let us take the key employees. Now does that not arbitrarily discriminate against small business people? Because if you have 3, 4, 10 people in a business, as opposed to thousands in a business, that certainly does not give a small ma and pa shop, or a small business, any opportunity to write off its car; whereas, if you had a 1,000-car fleet, the large businesses would have the advantage of writing off the entire fleet.

The only people that they would restrict would be a couple of the key executives. Is that a fact?

Mr. PEARLMAN. There is no limit in this, in our regulations, none whatsoever, that affects the deductibility of a car to key employees.

The only limit on key employees in this regulation is the unavailability of the commuting value, "safe harbor" rule, the \$3-a-day rule, and that was done because we were concerned, that people that were key employees, whether they were with large corporations or small corporations, may well, because they were not in the normal tension of an employer—

Mr. GUARINI. Yes, but the fact of life for a small business is that most of the employees would be key persons, so they would be excluded; whereas, with the large corporation, one, two, or three key people run a corporation, whether it is a small candy shop or whether it is IBM.

Mr. PEARLMAN. Well, let us just make sure what they are excluded from. They are excluded from the \$3 a day commuting value rule. They are not excluded from any of the "safe harbors" available for people, for the recordkeeping rules. They are not precluded from deducting the costs of their vehicles. We do not do that.

Mr. GUARINI. All right. Well, then let me get down to what the bottomline is. Loss of revenue.

You claim maybe perhaps, when the figures come out, it may show \$100 to \$200 million in lost revenue. Is it not possible to save all this dissatisfaction with the code that you see in Congress, and certainly, that is reflected by the dissatisfaction of the public, because I know I get a great deal of mail on this subject matter.

Would it not be possible to retrieve that \$100 million, or \$200 million, whatever is lost, just by changing the criterion or presumption, by moving the percentage of the presumption, and giving a person an option of either claiming a 100 percent by keeping all the records contemporaneously, or, in the alternative, allow them the same opportunity that you allow a farmer? Or allow them the same opportunity you would allow anyone else, in trying to retrieve that \$100 or \$200 million.

In other words, we could still obtain the lost revenue by just moving the percentage figures on a presumption. Is that not a fact?

Mr. PEARLMAN. Oh, I would just suggest to you again, that the revenue is only part of the story. I think the real issue you are raising is, do we want to take a person—and let us just assume the person does not use his car at all in his business. He is employed—large or small employer, it does not make any difference—he is employed and he is provided a car as a fringe benefit.

Do you want to permit that person to have a car fully tax free, or half tax free? Do you want to permit that employer to provide that car on a tax-favored basis to that employee without any recordkeeping or with minimal recordkeeping?

I am not trying to paint that as your proposal. I am simply saying I think those are the kinds of issues we have to deal with when we develop "safe harbors," and what we tried to do when we developed these safe harbors was to say, "Let's try to look at the categories of employees, not who they worked for, not whether they were large or small, but the categories of employees who, if they were provided a car by their employer, or if they were self-employed, they had a car themselves, are more likely—just because of what we know about their vocations—to use their car most of their time in their business."

And in those cases, we said we did not think we were doing damage to the congressional objective by relaxing the recordkeeping rules with respect to them. But I think we also have to be concerned about people, either whether they are self-employed, or whether they are employed by large or small employers, who will use their car very, very little in their business, and that is the category of employees, obviously, we have to be concerned about.

Mr. GUARINI. All right. I do not want to take too much time, but lastly, what we are talking about is, that it is not a matter of revenue, because we can raise the revenue by changing the presumption and the percentage that they could write off or not write off without any records.

Now if we are not talking about revenue, then all we are talking about is the purist idea of having a Tax Code that the public thinks is fair, and I present to you, with the outcry that you hear here, where 20 Congressmen and 2 U.S. Senators came forward, and the room full of people, and the mail that we are getting, is that there

is a tremendous resentment out there in the public, that they do not want this purism.

If the revenue is not being lost, and the people are more happy the other way, I cannot see any reason why we have to persist in forcing a regulation on the public that is highly unpopular and unwanted.

Mr. PEARLMAN. Well, I happen to share your view that it is not only a revenue issue, but I do think it is a balancing and a fairness issue. I mean, if you were talking to a group of employees who do not get the benefit of cars, they might not think it is so fair, without regard to the amount of revenue involved, because they perceive the tax system either as being fair or unfair, and we know a lot of people perceive the system as being unfair.

But I think it is a balancing issue and I think that is really what you are saying. No one that I have heard, even the most vocal opponents of these proposals, are suggesting there should be no recordkeeping required for the business use of assets.

I have not heard that suggestion at all, and so I think what we come down to is sort of balancing it. What kind of records do we want taxpayers to have to keep?

Mr. GUARINI. Well, both of us would like to live in a just world but I submit to you that this is not truly a just world. There are some criteria and rules that we all have to live with which are averages. Thank you.

Mr. PEARLMAN. Sure.

Mr. FORD. Mr. McGrath.

Mr. McGRATH. Thank you, Mr. Chairman. We have heard an awful lot today and I do not want to burden the committee with a further length of questions on this. I would just like to point out, though, that this is either the most understood or least understood of regulations that we have on the books. Our options are clear. We are either going to repeal it, or we are going to adjust it. Another course would be to allow Treasury to adjust it.

And with that in mind, I think that we should move ahead and hear from our other colleagues who would like to speak on this issue. Therefore, I yield back the balance of the time.

Mr. FORD. Mr. Matsui.

Mr. MATSUI. Thank you very much, Mr. Chairman. I just have a few comments and questions.

Mr. Pearlman, I want to thank you for your testimony. I thought it was very thoughtful, and frankly, I did not understand the issue that well until you testified this morning. It is not an issue of fringe benefits, as I think many people in the American public thinks it is. It is an issue, really, of compliance.

And I did not quite perceive that until I heard your testimony today. At the same time, I am on Mr. Anthony's bill to repeal the regulations, and I have to tell you, I think this is a little like interest and dividend withholding in 1983.

I stood on some railroad tracks and I got rolled over, and I still feel the repercussions of it, and I hate to say this but it is going to happen to you this time as well, because there is no way that you are going to be able to explain what you expained to us, to the balance of the Members of Congress, and certainly, to the Senate.

I think that everybody feels that this has to be repealed, or major revisions have to be made in it.

One question I have is that you seem to be very fearful of the issue of repeal. Prior to the 1984 act, you did have some tools. I was reading the report of the committee, and you repealed the so-called Cohen rule, or, that was repealed by legislation of Congress.

What prevents you from—assuming we repeal the 1984 rule, what would prevent you from actually auditing returns and requiring the records? Because it seems to me the language, prior to 1984, allows you to go in there and say, "If your records are inadequate—they do not have to be contemporaneous—but if they are inadequate and they do not justify what we need, you can disallow it as a deduction."

Why can you not use the prior 1984 rules in order to get compliance from the taxpayers?

Mr. EGGER. Well, we do that right now. The vast majority of the cases that we have either in examination, or before the Tax Court, are there because the taxpayer did not have any records and was unable to recreate the records. And so the difficulty is that we simply cannot audit 100 percent of the returns.

Mr. MATSUI. I understand, but perhaps what you ought to do is just begin enforcing the—assuming repeal of the 1984 rules, then all you have to do is just start enforcing the pre-1984 rules, and making sure that those people that you audit have adequate records, and if they do not, you can come down hard on them, and I can assure you that it will be front page news stories in a lot of small communities in the United States.

And then maybe that is the way you will end up getting compliance. I do not think you really need these rules in order to achieve your goals—

Mr. EGGER. I think there is a fundamental difference that has not been really articulated here, and that is that the thing that the 1984 act did, was not only to require records, but to say, "If you do not have the records, you get no deduction, period." And so it is not a question of whether or not we have substantiation.

The new law is a whole new ball game in the sense that it says, if you do not keep the records, you do not get the deduction.

Mr. MATSUI. OK. Well, let me just read you—and correct me if I am wrong—section 274(d). It says, "The Cohen rules were abolished by requiring the taxpayers to substantiate by adequate record, or sufficient evidence corroborating his own statements, all expenditures for travel. Now it seems to me that—"

Mr. EGGER. Except that that only applies to travel away from home. It does not apply to local travel.

Mr. PEARLMAN. You know, one of the things that the committee may well want to look at is extending the 274-d rule that you just read to all travel. It does not apply to local automobile use now, prior to 1984.

Mr. EGGER. And may I say, that is one of the solutions that I think could be looked at. I would be fearful of having the Congress simply repeal the 1984 act rule, without substituting a solution to the problem.

Mr. MATSUI. Thank you.

Mr. FORD. Mr. Dorgan.

Mr. DORGAN. Thank you, Mr. Chairman. I would like to ask a couple of questions about an area that I am unclear about at this point.

For a highway patrolman or a city policeman who takes his or her car home in the evening, are we requiring the employer, in this case the State Highway Patrol, or the city police, to add that compensation to that employee's income?

Mr. PEARLMAN. Yes, but let me emphasize again, that is not as a result of the 1984 act.

There is nothing in the 1984 act that said, all of a sudden, commuting income is taxable. Let me make one other comment. Some people would argue, and perhaps properly so, that there are certain occupations—let us take the policeman in his cruiser—who did not have commuting income under prior law, because they took the vehicle home, because they were on duty, because they used them for emergencies. If that is right, we are not changing that.

There is nothing that we do, in terms of commuting, that changes prior law.

Mr. DORGAN. Well, what has changed then? Something has changed?

Mr. PEARLMAN. Simply, we make it clear in these regulations, that to the extent that there is commuting income, the taxpayers, that is, employers and employees are required to account for it, and we added, really for the convenience of the employee—because they do not have to use it if they do not want to—a “safe harbor”, saying that if someone does have commuting income and they want to take the easy way out, and just include \$3 a day as the amount of the commuting income, then they can avoid fights with the Internal Revenue Service as to what the value of the commute is.

Other than that, we really did nothing.

Mr. DORGAN. All right. The reason I asked the question is apparently something has changed. You say it is clearer instructions at this point, but a city police department that, as a matter of policy says, “We want our patrolmen to have their patrol cars outside their homes, when they are off duty, because the presence of the police car is a good law enforcement technique”, and so on. Previously, as I understand it, there was not an add-back of income for that commute, but now there is a requirement that they add it back as income.

You are saying the law has always required them to add it in as income. You have just now made that law clear?

Mr. PEARLMAN. Yes. I think, Mr. Dorgan, that there are a variety of areas involving commuting with employer vehicles, where taxpayers and the Service have not been clear over the years, and I think this is one of them.

Mr. DORGAN. Would you support the repeal of that sort of thing?

Mr. PEARLMAN. I avoid answering yes or no, not because I am troubled by the factual example you give—I am not troubled by a statutory exception for policemen—because the problem I have got is line drawing. You say policemen and someone else says utility company employees, and the next person says physicians, and, you know, we just go down the line.

Before we know it, everyone in the country is required to take their car home at night because they may go out in the middle of

the night on an emergency, and then you get in to issues like, does that mean that the commuting really isn't taxable in this country and that bus fares are deductible, and so forth. I think that is the issue.

Mr. DORGAN. I understand that, but the difficulty is that legislators, by and large, legislate, and people in the executive branch, by and large draw lines, and that is what we pay them for.

I have been a tax administrator as you know, and, as a State tax commissioner for years, I know you have to draw lines. I mean, I drew a line once which resulted in eggs being taxable and chickens being exempt.

It was not a very smart line. I changed it later. But the fact is, your job is to draw lines, and I think—let me just finish on this point.

Mr. PEARLMAN. Sure. Excuse me.

Mr. DORGAN. With respect to the addback of commuting value to a policeman who is asked by his or her police department to take the car home at night, this seems to me illogical, and you need to draw a line some other place.

I do not know exactly where the line ought to be, but I am trying to find out whether you are sensitive to how this sounds to that police department, and how it sounds to me.

I just think that this should not be an addback, and I would like to hear from you—

Mr. PEARLMAN. I think clearly, we are sensitive to that. I do not want to leave any impression we are not, but what I really intend to suggest is, I think it has got to be a legislative line.

I do not think we have an administrative ability to declare, that because we have sympathy for a certain taxpayer, that we are going to determine, administratively, that that is not commuting. Congress has the opportunity to do that and I think perhaps Congress should, and identify those categories, or those vocations, where it is deemed to be inappropriate to apply what I think is the long-established rule that commuting is personal.

But we are sensitive to that issue, certainly.

Mr. ANTHONY. Would the gentleman yield at that point.

Mr. DORGAN. I would be happy to yield.

Mr. ANTHONY. I have introduced H.R. 773 which is a very tightly drawn bill, trying to be sensitive to the expansion of a working condition fringe exclusion. Would you support legislation, that terms a qualified public safety vehicle as one being "specifically equipped and operated by or for a governmental unit, and used by such governmental unit to provide law enforcement, fire protection, or emergency medical services"?

Mr. PEARLMAN. My Senator from Missouri, Jack Danforth told me when I came here, never to say yes when someone asked me that question.

Mr. ANTHONY. But also never to say no.

Mr. PEARLMAN. So I am not going to say yes. I think that legislation, which I was familiar with, Mr. Anthony, is something I think we certainly want to look at, and indeed, we may end up being supportive of that legislation.

Mr. ANTHONY. Thank you for yielding.

Mr. DORGAN. Let me say, just on the more general subject of contemporaneous recordkeeping say, that again, having had some experience in the tax administration field, and feeling that I am basically a tax reformer who would like to simplify the code, and make it more fair and equitable, there has to be a reasonable tradeoff between the correct tax theory and the correct application of that tax theory.

As to the firestorm of protest how over the contemporaneous recordkeeping requirement, it probably should not be a surprise to any of us. I do not think that this committee would, in a million years, have passed a bill that affirmatively said, "We are as of next January 1 going to require people to keep log books in pickup trucks and cars", and so on and so forth. That is not the kind of legislation that would ever have gotten through this committee. But, you know, it happened through a series of procedures, and conference, and so on, and in the regulation and rulemaking, and we end up at that point.

And I guess all I am saying is, I think that we kind of sit downstairs counting pennies while somebody is upstairs robbing the bank in our tax system.

We have got giants making big, big money paying no taxes at all, and it seems to me that the first place to put the big cork is in the big hole. And we are down here fooling around, talking about whether some little old guy out there in Grenora, ND, who drives his pickup truck, is going to keep a note on whether he goes to town to buy a loaf of bread or a part for the power takeoff equipment.

I just think that you can go too far in some of these small minutiae things in the Tax Code, and I understand, from a theory standpoint, why you could require anyone who wants to write off anything as a business asset, and depreciate it, to maintain incredible amounts of recordkeeping.

But I tell you that I think it is a misplaced priority, this searching through the code for those kinds of things, when we have got the drainplug open on the bathtub and large interests make megabucks through Tax Code loopholes, which we ought to close first. I understand the difficulty you have with this job, and I know it is never easy to write a rule or regulation. But I think what you have heard from the people on this committee is that we did not start out to design anything that would require the kinds of records being required of people now, even with your modification in the rulemaking.

Last Saturday, a farmer told me, in Calvin, ND, that, "I have two pickup trucks and two cars. None of them are new, by the way. They are just some old codgers." But he said, "The pickup trucks just sit there and we use them on the farm, and that is all we use them for."

I said, you know, "I do not think anybody ought to tell me I can only write off 80 percent unless I keep a log book of some type."

And so I think we really ought to rethink this whole area, and spend our time chasing the people who are getting away with the real loot in this Tax Code.

Mr. EGGER. I think we are trying to do that, Mr. Dorgan. The whole point of the comment process on the regulations, is to identi-

fy the areas where we have gone off the deep end, or where the regulations require too much, and if in fact there is a better way to do it, obviously, we would prefer to do that. And I think we have said that over and over here again today.

But I think you, as a former tax administrator, must certainly know that you cannot enforce that aspect of the tax law without any kind of records. You have got to have some kind of records.

So what we are really talking about is how much recordkeeping. Not if, but how much. We are searching for that as well, and if people will assist us in trying to sift through the variety of problems to arrive at that, we are surely willing to do it.

Mr. DORGAN. Well, just to keep our eye on the ball here, we, in the House, on this subject, really wanted to prevent the writeoff of Rolls Royces, and, you know, we have talked about that before today.

We had passed around to this committee advertisements that appeared in some of the newspapers, which said, "Buy a Rolls Royce for \$109,000. If you are in the 50 percent bracket, the American taxpayer will pay for half of it for you."

That sort of nonsense was going on, and this committee decided, all of us, you know, that that sort of abuse should not be accepted and we should try and change that type of abuse.

And so we started down that road. Unfortunately, we ended up at a destination none of us ever contemplated. And today we hear once again that sure there is a problem, because some people are buying automobiles that those people would not have bought, except that the automobiles could be written off. But let us not penalize the many in order to catch the few.

Let us try and figure out an appropriate way to target those few and administer the Tax Code in that way, and it can be done, in my judgment. It can be done.

The process of drawing lines is a difficult one, I admit. But it can be done in a reasonable way by comparing pure equity and pure theory questions with the actual practice of what you are asking people to do. This can result in a compromise that is reasonable, that allows you to administer, and allows people to comply.

Mr. PEARLMAN. I think you will find us cooperative in that regard.

Mr. DORGAN. Thank you very much.

Mr. FORD. Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. Gentlemen, I think that there has been an abuse. I do not think anybody who knows anything about tax law will say to the contrary. Since IRS is not able to audit all returns, there have been people writing off cars for business use when, in fact, the use was personal. Meanwhile, they are taking deductions for which they are not entitled. I admit that. I think everybody on the committee ought to admit that. Now the question is, what do we do about it? The rule that you came out with, I think went too far. I think we all are aware of that. We really ignited a real prairie fire of people objecting to recordkeeping. Now we are trying to find a way out of this. The second choice you came up with is certainly better than the first, and my line of questioning is going to be very much like that of Mr. Dorgan's. Can we not move a little bit further? You draw lines, and you ought to

draw some more. It is ridiculous to have a policeman who has to take home his car be charged \$3 a day income for that. Now we ought to just admit that and draw the line, and be done with it, because if you do not, you are going to lose the whole standard. You are going to force the Senate and the House into repealing the whole thing, fighting over something like that, which does not amount to a hill of beans. So, start drawing those kind of lines. The ones you have drawn and the rules you have now, as compared to the ones that took effect in January are better. Let us draw some more to get this thing down to what you are really after. The business people I am talking to back home fully admit that many of them are writing off their cars and should not, and they are willing to come up with some kind of fair compensation for that.

What they do not want to do is keep these blame records. So, what I am trying to suggest now is, let's go further. For instance, my wife is a real estate sales person. We kept a log of the month of January.

We look at the 70 percent that you now are going to let her write off automatically because she is out of an office over 50 percent of the time, and uses the car in her business over 50 percent of the time.

We decided that is fair. We can live with that. And most people, when I go back home and say, "If you want more than 70 percent, keep some records," and they say, "OK. That is fair."

Why cannot you do the same kind of thing for those vehicles to which we are saying, "No, because you are not out of the office 50 percent of the time, you have got to keep records 100 percent of the time"? Why cannot the reverse of that be applied. Say instead that you are going to be presumed to have to declare so much of the value of that vehicle, or the rental value of that vehicle as income?

No doubt you will find a lot of them saying, "OK. Just get me off the hook with this dumb recordkeeping and I will be glad to do that." Some employers are doing that now. For years they have been making their employees pay to the company x dollars a month, as the value of the automobile, realizing that portion of it represents personal use of the vehicle by that employee.

I think to repeal this rule would just send a signal to go right on ahead, allowing your wife and your college kids, to use an automobiles and write it off for business purposes when, in fact, the use is personal.

What repeal is going to mean, is boy, you have won—you know—you can just go right out there and just keep right on taking advantage of a tax system, where a wage earner cannot do that.

But somebody who owns a business or is an executive somewhere can. I do not want to see that happen. But you have got to be a little more reasonable, or this group is going to be stampeded into doing something like that.

Mr. PEARLMAN. Mr. Moore, I happen to share your view about the possible consequences of repeal. We did look at the possibility of reversing the numbers, if you will, and say, "Look. If someone is not using their car very much of the time, let them include 80 percent of the value of the car in income and only deduct 20 percent" and frankly, the concern we had was we thought that what that really did was just create, administratively, the next tax-free fringe

benefit. We did not think that that was appropriate for us, administratively, to do.

That is, it would be, in my judgment, irresponsible for employers then not to say to employees, "Look. We can save you some money. We will buy cars and we can absolutely, legally, exclude 20 percent of that value of that car if we use those numbers, from your income."

That is, I think, a road down which we were very reluctant to go. The revenue implications are another issue but beyond that, it seemed to us that was perhaps not the way administrators should go.

I think that the issue of how do you deal—to me, the more constructive, next step, is to say how do you deal with those people whom we do not cover in the current 70-percent rule? How do you deal fairly with them?

Well, some of them, if they use their car very nominally in their business, it is no burden for them to keep a record of their business use, any more than it is for the person who uses his car 95-percent in business that is eligible for our 70-percent rule. He can keep just his personal use if he wants to.

It may be very easy for him, and he can get a 95 percent deduction, if he wants to. I think we simply have to look at categories of taxpayers, and see who we are talking about, and maybe we do need another set of "safe harbors." It is certain something that I guess—

Mr. MOORE. Well, that is what I am suggesting, in the interest of trying to simplify the law to a point where you do not have to audit everybody to get better compliance. At the same time, we do not want to go so far as this type of recordkeeping, which might cause us to lose the whole thing. If that happens, you are going to wind up being no better off than before, and with the impression that everything is going to be tax deductible now, so do not worry about it.

The same goes for the police and firemen's cars, and the \$3 a day income inclusion rule. I know you came up with a rule and it sounded reasonable; but this is not reasonable. I mean it is front page news back in my home town. The story starts with some guy who works for the local police department which employs three police officers. If the policeman takes his car home nights, he or she is going to be charged \$3 a day income.

Well, you know, there are valid reasons why he is told to take it home, besides commuting, and that just destroys the whole emphasis of what you are trying to accomplish.

You carve those people out and a third of the people in this room are going to leave. Then you are going to get this thing down to what we are really talking about. We are talking about executives, lawyers, and accountants, and salesmen and stockbrokers, who are writing off their car a hundred percent of the time. We know that they really should not be doing that.

Then let us work out a reasonable rule of how much of that we are going to let them write off, and how much we are going to make them declare as income. I think you are going to find another two-thirds of the room leave.

Then you are left with a rule that we can live with and can be administered. That is what I am suggesting to you, because the way you are going now, you are just heading for the whole thing being repealed, which would be a mistake.

It would be a mistake, a signal sent out to the working people in this country who think the tax laws are unfair, and they are. If they work for a living and have to ride a bus to work, or a subway, they get no tax deductions for any of this. They know that the local banker is getting a tax deduction for his Lincoln. We are creating problems you are trying to solve, and we would like to see solved. But you are not going to get there with this recordkeeping that is harassing people, and this \$3 a day charge. Let us try to find a more automatic formula way to do it, similar to the 70 percent automatic writeoff for anybody using their car over half the time. That is a step in the right direction. People accept that.

I think the reverse of that they will accept, and carving a few people out of the general rules will also be accepted. So I really urge you to move in that direction. I say that as somebody who has great sympathy for trying to collect the taxes on those people who owe them, and are not paying them. Let us work on a reasonable solution before this Congress has to face raising taxes on the people who already are paying them to make up for that \$100 billion a year that is not being paid right now in income taxes by individuals across the country.

Mr. FORD. Thank you, Mr. Moore.

I guess in the conference report the word "contemporaneous" was placed in the conference, and the Treasury Department wrote the regs on the language and the regulations that are now in existence on this particular issue that is before the committee.

There have been some two dozen bills that have been introduced in the hopper here in the Congress as well as hearing from all of the members of this committee today, it sort of clears the way that this committee might be moving in future weeks.

I understand that the Treasury Department will have an administrative hearing sometime in April on this particular matter.

Mr. EGGER. April 16, 17, and 18.

Mr. FORD. Is it possible that since the regs were written by Treasury or the Service itself that you might rethink those regs now and picking up where Mr. Moore left off, to make the changes that would be needed as they relate to recordkeeping than have legislation passed by this committee and acted upon by the Congress itself?

Mr. EGGER. Absolutely, the whole purpose of the comment period during which the temporary—and proposed regulations are out there is to receive that kind of comment back and then to respond to that by attempting to rethink areas or even all of the regulation. Obviously from everything we have heard, not just from this committee, but from other Members of Congress as well as a great deal of the public. Rest assured that we are highly sensitized to the need to reexamine that and to do everything we can to provide a set of rules and guidelines that will be effective from the standpoint of compliance with the tax laws, and at the same time not overly burdensome. That is our objective.

Mr. FORD. Right. Because large and small businesses alike have all been in contact with Members of the House, I am sure, as well as Members of the Senate. It is an area in which we would like to get cleared up and hopefully the IRS will give us the relief that will be needed that we need not have any legislation.

I am the sponsor of a piece of legislation myself and cosponsoring several other pieces of legislation on this particular issue, and I certainly would hope and will be watching very closely to see what will happen in April, and if not, I certainly will join with my colleagues on this committee and others to make that we give you the type of legislation that will be needed in order to change the format now.

Mr. Pease.

Mr. PEASE. I thank you very much, Mr. Chairman, and Secretary Pearlman, Commissioner Egger, I would like to thank you for your testimony and commiserate with you a bit. It must be difficult for you to see Congress pass laws time after time and to see the committee record and conference committee reports support what the law says, and then have to come in 3 months later after you have implemented the law and find Members of Congress denying that they ever said what they said.

I was interested in your testimony, Mr. Egger, where you quoted the House committee report, the Senate committee report and the conferees' report and noted in particular that the conferees in so many words said that in respect to automobile log recording the date of the trip and the mileage driven for business purposes must be kept. It seems to me that that is pretty clear and that you did little more than carry out the intent of the conferees.

Mr. EGGER. I think what is more evidence, Mr. Pease, is the fact that the conference report then goes on to say that to the extent those records are not kept, there will be a presumption of negligence on the part of the taxpayer. So they made it pretty strong for us.

Mr. PEASE. I thought the testimony of both of you gentlemen was excellent and I am pleased that you recognized the dilemma that we are in. Obviously, these recordkeeping requirements are unpopular. I think all of us can understand that, but I think you have framed the issue as not only and probably not even primarily one of additional revenue but rather one of tax compliance and fairness in the Tax Code. We are hearing a great deal these days about the public demand for tax reform because of a public perception that the Tax Code is not fair.

You point out rightly, I think, that in our zeal to relieve the recordkeeping burden of our constituents and to respond to their understandable unhappiness that we not throw the baby out with the bath water and return to a situation where the public perception again can be that there is a good deal of unfairness in the Tax Code.

I would also like to commend you for your revised regulations. They may not go as far as some members of the committee would like and some of our constituents would like, but it does seem to me as I read your revised regulations that they represent a good faith effort to be reasonable and to make reasonable exceptions to your original rule.

I, personally, do not think we ought to be talking about repeal of the contemporaneous rule in the law, but obviously since there is a good deal of concern this is an area that we ought to try to respond to in some reasonable way.

I hope that you will keep looking at the response you are getting, looking at actual situations to see if, in practice, for given groups of constituents, taxpayers, the revised regulations are as reasonable as they appear to be on the surface, because it is a truism, I think, in our society that if we do not respond to the reasonable complaints of taxpayers that that can undermine the Tax Code every bit as much as the perception that there is cheating going on by taxpayers.

So I would hope that in the next month or so and even after your hearing is finished, you will continue to look at the actual application of the revised regulation and if it is necessary to come back in here and ask for some modification of the contemporaneous requirement, some statutory exceptions or whatever, some flexibility on your part, that you will come and do that.

In the meantime, I would hope that we would not pull the rug out from you entirely because I have been convinced by what you have said this morning that you do need some sort of statutory basis to make a requirement or at least to seek from taxpayers some justification and elaboration of their tax deduction.

I would like to ask you just one or two questions. Some taxpayers in my area seem to think that they are going to have to supply these records along with their tax returns. My understanding is that the records will have to be available in case there is an audit, but there is no requirement that the taxpayer submit the records along with their returns. Am I correct about that?

Mr. EGGER. Absolutely correct, yes.

Mr. PEASE. OK. Now what about firemen and people like that who run rescue vehicles? Are they covered now by the \$3 a day rule if they have to take an ambulance home for a township or that sort of thing?

Mr. EGGER. Yes, in general. We have not made any exceptions to that, and as Assistant Secretary Pearlman has already pointed out, we regard that as an issue that is not necessarily a part of these regulations. It is a separate issue that needs to be reviewed, but it does not arise because of the recordkeeping. It arises, I think, because we put in the regulations a safe harbor to cover the value of commuting where it is involved, and we did not attempt to draw any lines or make any decision about who is in and who is out. It is simply a question of the valuation of the commuting.

Mr. PEASE. What would be required to provide some exception for people who operate, say, ambulances in townships? The township does not have a full-time ambulance service or a full-time fire department and it is, obviously, a lot better if the ambulance driver can get the call and go directly to wherever the emergency is.

Would that require a change in the law or could you do that by regulation?

Mr. PEARLMAN. Mr. Pease, we are not sure of that. We may well require a change in the law. I think that is an issue. I think this whole issue of commuting is something that we are going to have

to look at and put the lawyers to work and make a judgment as to what we think the law is and we may be back up here.

That is an area where we may need some help from the Congress.

Mr. PEASE. Well, that is the sort of thing I was talking about before. I think other members of the committee have made the point before that if the rules are reasonable, most Americans will maybe grumble a little bit but they will live with them. There are always going to be some people who are not going to be satisfied, but most people will be.

I find that as I talk to my constituents this issue of emergency vehicles, especially in rural areas, is one where people really cannot see why they should be charged taxes on the value of commuting with a vehicle when the clear purpose of taking the vehicle home is to make it available for emergency purposes.

Well, I am glad to know that you are thinking about that, and I hope if you come to the conclusion that there is a need to provide some statutory change that you will not hesitate on principle to come to us and make that suggestion.

Mr. ANTHONY. Will the gentleman yield for just one additional question?

Mr. PEASE. Yes. I would be happy at this point to yield to my colleague for a question.

Mr. ANTHONY. I have one additional question. You mentioned tractors earlier and several other exceptions. Could you tell me where you think this particular type vehicle, an over-the-road truck tractor falls?

Mr. PEARLMAN. Well, I am not sure where a truck tractor falls. It is certainly not the kind of vehicle that is susceptible to very much personal use. What we tried to do is draw a distinction between automobiles and trucks in the safe harbor because we thought that people were more likely to use automobiles for personal use than trucks.

Then when you got into the nonautomobile vehicle because it was tough for us to draw a line, simply say if they were vehicles that could be used for personal use, then they could either use the 80-20 percent safe harbor or they would have to keep records. I am just not sure where the tractor would fall. I just do not know the answer to that.

Mr. ANTHONY. How could we work with you to find out a clear definition?

Mr. PEARLMAN. I think it is just a matter of us going back and talking to the people who probably would know.

Mr. ANTHONY. Would you do that for me?

Mr. PEARLMAN. Sure.

Mr. FORD. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. I simply want to make a statement to Mr. Egger and Mr. Pearlman. You obviously can see what a firestorm these proposals and regulations have made; 180 or more Members of Congress either want to repeal the law or make some vast changes.

So this simply is a reflection of the great unrest out there regarding what people will be required to do. Most members, I think, of this committee feel that the restraints on depreciation, the limita-

tion on investment tax credits are good provisions of the law. Not many people I have talked with would want to repeal that.

The problem, of course, is in the area of the recordkeeping and the very stringent regulation. I simply leave this thought with you as one who tries to be sympathetic to the problem you have in carrying out the law that was passed.

Just remember that we basically are a nation of voluntary tax compliance. That is the heart of our system. There are some areas that the Federal Government just simply cannot, in detail, regulate.

I think we ought to remember if taxpayers do wrong, they can be found guilty. So I would hope that you would attack this issue positively, and that means setting up reasonable guidelines so that taxpayers will not feel like they would be put in jail if they miss a single entry into a logbook.

But surely there is a way to do that, and I would hope that you would just remember that we do depend on voluntary compliance. I think we have to trust a person's word basically, and that may be the key to this whole thing.

Mr. JONES [presiding]. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman. You gentlemen have been very generous with your time. You have been before the committee for over 2 hours now so I will be very brief.

In talking to a colleague about this situation this morning, I inquired as to whether he had been receiving a great deal of mail on this issue and he said, "No." But he said, "Of course, my congressional district is not a wealthy area. The average income is less than \$10,000."

I mention this so that, as you search for a middle ground or a formula, you may want to consider income in that formula, because there is probably a certain income level below which this is not going to come into play and an income level above which the incidence is probably more regular or more attractive.

With that I commend you for your reference. I hope we can find a solution, and I thank you for your testimony.

Mr. JONES. OK. Without further questions, I want to thank the Secretary and the Commissioner for your time and your testimony. I am sure we will be hearing from you again.

Mr. PEARLMAN. Thank you, Mr. Chairman.

Mr. EGGER. Thank you, Mr. Chairman.

Mr. JONES. I would like to call forward our next panel right now. From the Runzheimer International, Robert Kastengren, executive vice president for transportation and Thomas W. Gearing, vice president, finance and taxation.

From Peterson, Howell & Heather, Inc., Eugene A. Arbough, president; and Samule H. Wright, vice president and associate general counsel of PHH Group, Inc.

From Coopers & Lybrand, Ira H. Shapiro, director of tax policy.

Gentlemen, welcome to the Ways and Means Committee. We will proceed in the order I called you, and I would say in advance that all of your statements will be included in the record in their entirety. You are encouraged to summarize your remarks.

Mr. Kastengren.

STATEMENT OF THOMAS W. GEARING, VICE PRESIDENT, FINANCE AND TAXATION, AND ROBERT H. KASTENGREN, EXECUTIVE VICE PRESIDENT, TRANSPORTATION, RUNZHEIMER INTERNATIONAL

Mr. GEARING. Mr. Chairman, members of the committee, I would like to introduce Mr. Robert H. Kastengren, executive vice president of the transportation division of Runzheimer International and myself, I am Thomas W. Gearing, vice president of finance and taxation.

Mr. Kastengren will be presenting our testimony today and we will both be available for questions and answers subsequent to that testimony.

Mr. Kastengren.

Mr. KASTENGREN. We came today to address your concerns about recordkeeping, but we feel you should know a little bit about our background first. Runzheimer International was founded in 1933 and is headquartered in Rochester, WI. We are an international consulting firm specializing in business travel, transportation, and living costs.

Our transportation division's consulting services cover all aspects of company owned, leased, and employee-owned fleets, and we serve over 2,000 business and governmental agencies worldwide.

Our services include fleet cost and policy studies which help corporations establish proper recordkeeping procedures, automobile lifecycle costing models for State and local governmental agencies, the meal-lodging cost index used by the General Services Administration for identifying high cost locations and setting per diem limits and the development and maintenance of the model that is used by the IRS for their 20.5 cent writeoff limit for U.S. taxpayers.

We are a member and director of ACME, a membership that is obtained only by independent management consulting firms that meet the highest standards of professional practice.

Our experience obviously deals primarily with the business cars used for sales and service work. We note that cars used for business have been and should continue to be treated as legitimate business expense. Admittedly because the vehicle most often represents a cost that is shared by the employer for its business use and by the employee for personal use, it is not easy to properly allocate the cost between its true business use on the one hand and its personal value to the employee on the other hand.

However, because there have not been strict guidelines to measure the shared costs so that the personal value could be properly recognized and taxed, it is a fact that company provided vehicles have often been intentionally used as a means to sidestep taxation.

Although not widely discussed, the Tax Reform Act of 1984 will be an assist to the business community. This is because the proper recognition of the personal value of the company-provided vehicle can reduce the business fleet cost to the employer if the employee actually pays the employer for the personal use.

Our research discloses that conservatively there are approximately \$11.5 billion in annual fringe benefit value to employees from company-provided cars. In a survey we conducted of 724 firms in October 1984, it was revealed that nearly 27 percent failed to

calculate and account for the personal use of cars driven on business by their employees.

Our day-in and day-out consulting activities clearly show that about 80 percent of the 73 percent that do calculate an amount for the measurement of personal use are computing the amount inadequately.

Recordkeeping is essential to measure the personal value of the business car. Since the 1950's company-owned and leased cars have been aggressively sold to policymaking corporate management as untaxed fringe benefits.

In practical terms, an employee with a company-provided car could report much less personal use on the car than actual. Only if the corporate employer took a hard stand would the number of personal miles driven begin to reflect the facts.

Had the enforcement of previous regulations been effective, the Tax Reform Act of 1984 would not have had to address the issue of recordkeeping.

I would sum it up by saying that each vehicle is a significant asset whose value is almost always shared between the employer and the employee. The shared cost can be measured and properly allocated as we have demonstrated for over 50 years in our consulting activities on behalf of thousands of corporations.

Unfortunately, the American business community will not normally institute proper cost sharing unless strictly required to do so, and a strict legal requirement can only be enforced if contemporaneous records are kept.

We urge your reaffirmation of the need for contemporaneous recordkeeping but on the reasonable and auditable basis outlined in the February 15 amended regulations with the exception that we feel that all business driving mileage can be combined into only one entry per day.

We also recommend the retention of the 70 to 30 safe harbor split for sales and service cars. At stake is a fair and legitimate annual taxation of \$11.5 billion, and equally as important is the potential reduction of corporate business costs if employees are adequately charged for their personal use of the business vehicle. Thank you.

[The prepared statement follows:]

STATEMENT OF THOMAS W. GEARING, VICE PRESIDENT, FINANCE AND TAXATION, AND ROBERT H. KASTENGREN, EXECUTIVE VICE PRESIDENT, TRANSPORTATION DIVISION, RUNZHEIMER INTERNATIONAL

Mister Chairman, Members of the Committee, I would like to introduce Mr. Robert H. Kastengren, Executive V.P. of the Transportation Division of Runzheimer International and myself, Thomas W. Gearing, V.P. Finance and Taxation for Runzheimer International. Mr. Kastengren will be presenting our testimony today and we will both be available for questions after the testimony. Mr. Kastengren . . .

We know that you are concerned about the recordkeeping needed to separate the business use from personal use on automobiles. We know that you do not want taxpayers to be unduly burdened with recordkeeping, but are equally concerned about the significant non-compliance under the prior law and regulations. We came today to address some of your concerns but we feel that you should know a little bit about our background first.

RUNZHEIMER INTERNATIONAL BACKGROUND

Runzheimer International was founded in 1933 and is headquartered in Rochester, Wisconsin. We are an international consulting firm specializing in travel, transportation and living costs.

We have developed the Runzheimer Standard Cost Reimbursement Systems which form the basis for over one billion dollars in direct reimbursement to approximately 260,000 client employees annually. Employees under this service receive accurate reimbursement of car expenses by their companies. Runzheimer's Transportation Division consulting services cover all aspects of company-owned, leased and employee-owned fleets and we serve over 2,000 business and governmental agencies worldwide.

Our services include:

Fleet Cost and Policy Studies which help corporations establish proper record-keeping procedures.

The Runzheimer Plan of Automobile Standard Costs.

Automobile life cycle costing models for state and local governmental agencies.

Abiennial Survey and Analysis of Business Car Policies and Costs.

The Runzheimer Reports on Transportation newsletter.

Car cost data for the American Automobile Association.

The Meal-Lodging Cost Index used by GSA for identifying high cost locations and setting per diem limits.

The development and maintenance of the model that is used by the IRS for their 20.5¢ write-off limit for U.S. taxpayers.

We are a member and director of the Association of Management Consulting Firms (ACME)—a membership that is attained only by independent management consulting firms that meet the highest standards of professional practice.

In addition to our Wisconsin headquarters, we have a branch office in Chicago and subsidiary corporations in Geneva, Toronto and Hong Kong. Activities in all locations are coordinated by state-of-the-art electronic communications anchored by a mainframe computer located at our Rochester, Wisconsin headquarters.

CONGRESSIONAL ACTION TO BETTER MEASURE THE PERSONAL VALUE OF COMPANY-PROVIDED CARS

Cars used for business have been, and should continue to be, treated as a legitimate business expense. Admittedly, because the vehicle most often represents a cost that is shared—by the employer for its business use and by the employee for personal use—it is not easy to properly allocate the cost between its true business use on the one hand and its personal value to the employee on the other hand.

However, because there have not been strict guidelines to measure the shared costs (so that the personal value could be properly recognized and taxed), it is a fact that company-provided vehicles have often been intentionally used as a means to side-step taxation.

Recognizing that this has been the case, the legislators took responsible action last July to see that the value of the vehicle to the employee is properly measured and taxed.

Although not widely discussed, this legislation has been an assist to the business community. This is because the proper recognition of the personal value of the company-provided vehicle can reduce the business fleet cost to the employer, if the employee actually pays the employer for the personal use.

Our research discloses that, conservatively, there are approximately:

11.5 billion dollars in annual fringe benefit value to employees from company-provided cars (based on: 8.5 million cars used for business, a \$4,500 total annual cost (ownership and operating) per car, a 30% value (\$1,350) that can be presumed to be the fringe benefit).

14.3 million businesses operating in the U.S. 2.7 million corporation, 1.6 million partnership, 10.0 million self-employed.

5 million of these 14.3 million operate one or more cars on business

8.5 million cars are operated on business by these 5 million firms

935,000 cars are operated by government agencies

195,000 cars (2.3%) are executive level perquisites

A survey we conducted of 724 firms in October 1984 revealed that nearly 27% fail to calculate and account for the personal use of cars driven on business by their employees. Our day-in and day-out consulting activities clearly show about 80% of the 73% that do calculate an amount for the measurement of personal use are computing the amount inadequately.

RECORDKEEPING IS ESSENTIAL TO MEASURE THE PERSONAL VALUE OF THE BUSINESS CAR

The enforcement of the recordkeeping requirements prior to TRA of 1984 was too loose. Since the 1950s, company-owned and leased cars have been aggressively sold to policymaking corporate management as untaxed fringe benefits. Very few firms have accurately measured the personal value of company-provided cars and assessed proper chargebacks to the employee. In practical terms, an employee with a company-provided car could report much less personal use on the car than actual. Only if the corporate employer took a hard stand would the number of personal miles driven begin to reflect the facts.

Had the enforcement of previous regulations been effective, the TRA of 1984 would not have had to address the issue of recordkeeping.

TEMPORARY REGULATIONS ISSUED BY THE IRS ON JANUARY 7, 1985

The regulations together with the questions and answers issued by the IRS were intended to be reasonable and instructive.

They spelled out the kind of information that should be maintained in the contemporaneous records:

- (a) The date of the use of the property.
- (b) The name of the user.
- (c) The number of miles.
- (d) The purpose of the use of the property (e.g., to make a sales presentation).

Unfortunately, the regulations left room for over-interpretation.

Some felt that the regulations required every movement of the vehicle to become a separate entry on some log. So that if six business stops were made, coupled with a lunch stop and commuting, there would be an entry for each action, to show mileage, time of day, name of business, name of contact, exact location, etc.

We don't feel that this was ever the intent of the Treasury Department and we do not endorse any extreme form of logging.

We do feel that the February 15 clarification of what constitutes an adequate contemporaneous record for automobile mileage is reasonable, with one exception. It should be allowed that all business driving mileage may be combined into only one entry per day. Thus, the expense report forms of most corporations (see an example as Exhibit 1) will continue to suffice as an acceptable "contemporaneous record." We find, with firms already using this form of contemporaneous recordkeeping, that each driver spends approximately two minutes per day to comply—a recording activity that is incidental to the overall travel cost amounts that are recorded for the balance of an employee's travel activities,

ATTACK ON THE JANUARY 7 TEMPORARY REGULATIONS REGARDING RECORDKEEPING

There has been a great deal of concern about the stringency of the recordkeeping. Some honestly find it to be an additional burden. However, for the majority of sales/service personnel working for corporations, keeping a record on mileage is less onerous than (and actually incidental to) the records that have to be kept for the majority of their other business expenses.

However, we all need to also recognize that a substantial portion of the rhetoric criticizing recordkeeping is merely a disguise to prevent the potential dollar impact from being realized. After all, if recordkeeping is stripped of its teeth, it will seriously impact the whole intent of the original Congressional action.

If, for example, you have 30% personal use, but through lax recordkeeping only report 5% personal use, a 25% sum is lost for taxation.

Put in terms of one employee with a vehicle that carries a \$4,500 annual cost, that is \$1,125 that won't be taxed.

Put in terms of the 8.5 million cars used for business, that is 9.6 billion dollars in fringe benefit value that won't be taxed.

FINAL DRAFT (2-15-85) OF TEMPORARY REGULATIONS ISSUED BY THE IRS

Under the latest draft of regulations, a corporation with a car used for sales/service work can use the safe-harbor alternatives:

A. Use a 30% presumed personal ratio and not keep contemporaneous records.

B. Record only the total number of miles driven and the miles driven for personal purposes, and not keep contemporaneous records.

Option A, of course, applies primarily to cars used regularly in sales/service activities. This is a fair option for those who do not wish to maintain contemporaneous records. It logically recognizes that the vast majority of company-provided cars are available to the business) and this is a legitimate business expense) only on business

days—which is normally 5 of each 7 day week. And $\frac{5}{7}$ results in a decimal equivalent of 71.4%.

Option B, is, in effect, an even more relaxed requirement than the situation prior to the TRA of 1984. If the personal miles reported are inaccurately low, there is little recourse for the employer or for the IRS auditor—and there is a significant financial impact in lost tax dollars to the Treasury.

If, for example, an employee has 30% personal use, but only reports 5% of the miles as personal, a 25% sum is lost for taxation.

Put in terms of one employee with a vehicle that carries a \$4,500 annual cost, that is \$1,125 that won't be taxed.

A scenario of what the reporting of only personal miles could result in, is a situation in which the driver reports either once per quarter or once per year, a simple one-sentence statement of what his personal and total miles were in that reporting period. The current regulations do not require any more detailed reporting than this. This will undoubtedly result in substantial under-reporting of personal miles by some drivers, as well as a possible overstatement of total miles, since odometer readings are not necessary under this alternative. When either the company or driver is audited by the IRS, the auditor is very likely to be suspicious of the low personal use. At this point several things could happen:

first, the auditor may suspect the personal use is under-reported and arbitrarily make an assessment at a higher personal-use value or possibly disallow all of the automobile expenses.

second, the auditor might review all of the contemporaneous records that are still required to be maintained for all other travel and entertainment expenses. If this review indicates that there is not a pattern of daily travel and entertainment expense, the auditor will assume that there are a number of days when the only automobile use was personal use and again, either assess an arbitrary personal-use percentage or disallow all the automobile expenses.

A third possibility would be the auditor estimating the commuting mileage of the driver times the number of business days, to arrive at an adjusted personal-mileage figure, which is still probably understated since it ignores all the other personal use that the driver may have accumulated.

In all of these examples, the taxpayer will protest the assessment on the basis that the regs have been complied with. The IRS will maintain that their assessment is proper and that there has been under-reporting of the personal use and no one will have the records to prove what the right answer should be. Therefore, the issue will have to go a higher appellate level or to tax court to be resolved. I think it is obvious to everyone here that this will result in a greater cost and waste of time than any form of recordkeeping.

Option B, reporting only the personal and total miles, should be eliminated from the regulations.

In our daily consulting experience, corporate America has already begun to have their employees keep contemporaneous records and the system is slowly coming on stream as an accepted business activity.

FINAL SUMMATION

Each vehicle is a significant asset, whose value is almost always shared between the employer and the employee. This shared cost can be measured and properly allocated as we have demonstrated for over 50 years in our consulting activities on behalf of thousands of corporations.

Unfortunately, the American business community will not normally institute proper cost sharing unless strictly required to do so. And a strict legal requirement can only be enforced if contemporaneous records are kept.

We urge your reaffirmation of the need for contemporaneous recordkeeping—but on the reasonable and auditable basis outlined in the February 15 amended regulations, with the exception that all business driving mileage may be combined into only one entry per day.

We also recommend the retention of the 70/30 safe harbor split in lieu of contemporaneous recordkeeping for sales/service cars because it logically relates to a normal business usage of 5 days in a 7 day week.

At stake is a fair and legitimate 11.5 billion dollars annual taxable base to the Federal government. And equally as important is the 11.5 billion dollar potential reduction of corporate business costs if employees are adequately charged for their personal use of the business vehicle.

TRAVEL EXPENSE STATEMENT
DOMESTIC TRAVEL

Beginning Balance _____

Travel Advance _____

Total This Report _____

Ending Balance _____

FOR WEEK
ENDING _____

MR./MS. _____, 19__ No. _____

DATE	SUN.	MON.	TUES.	WED.	THURS.	FRI.	SAT.	TOTAL FOR WEEK
CITY								
BUSINESS MILEAGE								
BREAKFAST								
LUNCH								
SUPPER								
HOTEL/HOTEL								
TRAIN/TAXI/ LIMO/BUS								
PLANE								
CAR RENTAL								
LAUNDRY/PRESS								
POSTAGE								
PHONE								
TELEGRAMS								
ENTERTAINING								
TIPS								
BUSINESS MILEAGE PER MILE @								
TOLLS								
PARKING								
OTHER (PLEASE SPECIFY)								
PERSONAL--TO BE REIMBURSED BY EMP.								
TOTALS PER DAY								

REMARKS:

(APPROVED)

(SIGNATURE)

INDIVIDUAL/COMPANY CONTACTS*

Date	Project Code #	Company	Individual Contacted	Purpose of Visit

ENTERTAINMENT COSTS

Date	Individual & Company Name	Name & Location of Meeting/Entertainment	Purpose	Time

*Must be completed for each customer/prospect visit where business expenses are incurred.

Receipts must be attached for any expense of \$25.00 or more.

Business entertainment/meeting expenses must be accompanied by the names of those entertained or in meeting, the name and address of the location where the meeting/entertainment took place, the meeting purpose, and the date, time and amount.

Mr. JONES. Thank you very much.
Mr. Arbaugh.

STATEMENT OF EUGENE A. ARBAUGH, PRESIDENT, PETERSON, HOWELL & HEATHER, INC., ACCOMPANIED BY SAMUEL H. WRIGHT, VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL, PHH GROUP, INC.

Mr. ARBAUGH. Mr. Chairman, members of the House Committee on Ways and Means, my name is Eugene A. Arbaugh, and I am president of Peterson, Howell & Heather, Inc., of Hunt Valley, MD. With me today is Samuel H. Wright, our vice president and associate general counsel.

I sincerely appreciate the opportunity to testify before you this afternoon. Peterson, Howell & Heather was founded in 1946 to provide consulting and management services to companies which utilize automobiles and trucks in the conduct of their business.

PHH has currently over 230,000 vehicles under its management programs which makes it the leading company in the motor vehicle fleet management industry. In the interest of the committee's time, I will summarize my written testimony by emphasizing the following points.

The outpouring of response from corporate America on the issues before the committee today is not due to their desire to avoid or evade their responsibilities. Businesses simply desire that their responsibilities be clarified and simplified.

It is not in the Nation's best interest to have the cost of administering a portion of the tax law outweigh the amount of tax remitted. Most companies today maintain detailed analyses on the cost of operating their motor vehicle fleets including the amount of personal use of each vehicle.

Many companies obtain driver reimbursement of these costs, not for tax reasons, but as a sound business practice to reduce their costs. These costs are documented by periodic worksheets completed by the driver. I have attached several actual examples of these worksheets to my written testimony.

PHH urges the committee to accept such records prepared and maintained in the ordinary course of business as satisfying the recordkeeping requirement even though they may not be contemporaneously maintained.

The Treasury's proposed and temporary regulations create an unfair and inequitable result which I feel confident was never intended by Congress when the 1984 tax act was passed. The regulations reached the result that two drivers of identical vehicles which use the vehicles for an identical number of personal miles may be subject to significantly different amounts of imputed income.

In my written testimony, I describe two real world examples of such vehicle usage which results in tax liabilities which may vary by more than \$600.

Mr. Chairman, members of the committee, we do not understand the logic or equity in that result nor do the companies that we serve, and I strongly suspect that you share our view. These regulations cannot be allowed to create such inequities.

The Treasury's proposal establishing a safe harbor or 70 percent business use for fleet drivers is an effort to eliminate recordkeeping requirements. Our statistics, summarized in my full testimony show that this safe harbor will not provide any administrative relief for 95 percent of legitimate commercial fleet drivers.

PHH suggests that the committee evaluate the Treasury's concept of a safe harbor and, if it determines that such a concept be retained, the business use percentage be increased to approximately 85 percent.

The withholding requirements also are extremely onerous and require that employers base their quarterly filings on actual, not estimated, information.

PHH questions the need for such a precise basis for quarterly filings and urges the committee to permit employers to make such filings based upon good faith estimates.

Mr. Chairman, the IRS Treasury has not dealt with a crucial issue in these proposed regulations which requires clarification. Companies are uncertain as to the basis for differentiating between business and personal miles for many trips. Many drivers of commercial automobiles rarely travel to their employer's office. It would not be unusual, for example, for a Washington, DC salesman to have his first call of the day be in Richmond, VA, over 100 miles away.

It seems to us that all such trips made by such a driver to make business calls should be business use. In a never finalized regulation, Treasury would treat that 100 mile Washington to Richmond trip as commuting or personal miles. We do not support such a conclusion but are uncertain as to Treasury's current position. We urge you to give Treasury direction in this area.

Many companies reviewed Treasury's proposal, analyzed the administrative burdens and decided to have their employees supply their own vehicles. This action could have a significant adverse impact on domestic motor vehicle manufacturers. Our studies indicate the salesman-owned fleet would be composed of at least 30 percent foreign-manufactured vehicles as opposed to the current 98 percent domestically manufactured vehicles in company provided fleets.

The same studies also conclude that salesmen keep their vehicles in service for at least 1 year longer than company provided vehicles. We do not feel the Treasury proposed regulations should be so administratively onerous as to permit such a result.

While the confusion continues to exist, corporate America is spending hundreds of millions of dollars trying to gear up to comply with the temporary regulations and a statute which is subject to change. This situation requires prompt action by the committee.

Mr. Chairman, members of the committee, I wish to thank you for allowing me to submit PHH's view to you this afternoon on these issues of importance to businesses all across this country.

I welcome the opportunity to try to respond to any questions on my testimony.

[The prepared statement follows:]

STATEMENT OF EUGENE A. ARBAUGH, PRESIDENT OF PETERSON, HOWELL & HEATHER, INC.

Mr. Chairman and members of the House Committee on Ways and Means, my name is Eugene A. Arbaugh and I am President of Peterson, Howell & Heather, Inc. of Hunt Valley, Maryland. With me today is Samuel H. Wright, Vice-President and Associate General Counsel of our parent company PHH Group, Inc. I sincerely appreciate the opportunity to testify before you this morning.

Peterson, Howell and Heather, Inc. ("PH&H") was founded in 1946 to provide consulting and management services to companies which utilize automobiles and trucks in the conduct of their businesses. PH&H currently has over 230,000 vehicles under its management programs which makes it the leading company in the motor vehicle fleet management industry. A typical PH&H client has a fleet of over 100 vehicles and many of our clients operate fleets of several thousand vehicles. Companies served by PH&H include many of the Nation's largest corporations with vehicles located in every state. I have been employed by PH&H in a variety of managerial and executive positions for more than twenty years.

During the last several months, fleet administrators, business executives and even tax executives of our clients have been bombarding us with questions on the application and administration of the three sets of Treasury regulations which have recently been released. My purpose this morning is to share with you some of the major issues and concerns being raised by companies operating large fleets of automobiles, but before doing so I feel obligated to report to the Committee that the central theme of the companies we serve—"Corporate America"—is that they want clarification and simplification of their responsibilities. They are not concerned about collecting and remitting any tax legitimately due. They are concerned that reasonable statutory provisions or regulations be developed that cost less to implement than the tax which is due. Under the Treasury's current proposals, the cost to administer the program in most cases far outweighs the amount of tax being withheld and remitted.

Corporations which utilize large fleets of vehicles question the necessity for contemporaneous or daily records of vehicle mileage for the proper administration of the tax law. For over thirty years PH&H has been processing vehicle-related expense worksheets and providing reports analyzing this data to its clients. These worksheets capture information such as gasoline purchases, tolls, repairs and similar vehicle expenses and also contain information on the number of personal and business miles driven during the reporting period. These worksheets are typically produced on a monthly or weekly basis and are often prepared during the day or half a day which the sales or service driver periodically sets aside to catch up on paperwork. Samples of these worksheets are included with copies of my testimony.

The Committee should take particular note that companies require that personal use mileage be recorded based upon cost control objectives and not tax reasons. Companies need to monitor expenses as an integral part of the overall management of their enterprise. In order to reduce the cost of operating a fleet of vehicles, most companies charge drivers for the personal use of company vehicles at a mileage rate designed to make the company whole for this expense.

These worksheets typically are reviewed and approved before the expenses are reimbursed to the driver. This approval process creates a more timely monitoring of the reports' accuracy than would ever result from the separate and often duplicative "contemporaneous" log books required by the Treasury regulations.

PH&H urges the Committee to modify the statute to permit such records, prepared and maintained in the ordinary course of business on a less than "contemporaneous" basis, be acceptable for tax compliance purposes.

A summary of records of vehicle usage maintained by PH&H is set forth in Exhibit A "PHH Summary Statistics" of my testimony. This report does not include vehicle use information concerning several of our larger fleets which do not permit any personal use and whose vehicles are stored on the employer's premises during non-business hours. Because of the deletion of these vehicles, we feel the attached Exhibit is an accurate summary of vehicle usage by employees whose employers permit personal use of company provided vehicles. This summary points out two flaws in the proposed Treasury regulations which we feel merit the Committee's attention.

I invite the Committee's attention to the data on line "E" of Exhibit A labeled "Average Personal Miles". The average monthly personal miles under each category of business mileage does not deviate significantly from the overall average of less than 300 personal miles per month. It is PH&H's position, and one shared by almost all of the companies which use our services, that 300 miles of vehicle use has the

same value to an employee if he drives 1,000 miles per month or if he drives over 3,000 miles per month. Based on the two foregoing categories of total use just described and assuming a vehicle valued at \$10,000, we have calculated on Exhibit B the imputed taxable values of this personal use based upon the Treasury's proposed regulations. The proposed regulation reaches the result that the 300 miles of monthly personal use somehow has an annual value of \$1,128.00 to one employee and \$508.00 to another employee. Mr. Chairman, members of the Committee, we don't understand the logic or equity in that result, nor do the companies we serve, and I strongly suspect that you share our view.

The second issue highlighted by the summary on Exhibit A is that the "safe harbor" created by Treasury's proposed regulations allowing companies to maintain no records for certain drivers and claim that 70% of the use of the vehicle is business use and 30% is personal use provides record keeping relief for only five percent of corporate fleet drivers. I invite the Committee's attention to line "G" labeled "Percent Personal Miles" on Exhibit A. It is only those low mileage drivers in column 1 which are benefitted by the safe harbor. The remaining 95% of corporate fleet drivers would maintain records to substantiate their much higher business usage. Assuming the employer selected the 70/30 alternative, the employee's records would be subject to audit when the IRS examines the employee's not the employer's return. Examining such individual records would significantly increase the costs of such audits by IRS agents.

PH&H suggests that the Committee evaluate the Treasury's concept of a "safe harbor" and, if it determines that such a concept should be retained, the business use percentage for a legitimate business driver should be increased to approximately 85% based upon the cumulative average from our summary analysis.

Treasury's proposed regulations fail to provide any guidance to enable companies to differentiate between business and personal trips. Many drivers of these business automobiles rarely travel to an employer's office. It would not be unusual, for example, for a Washington, D.C. based salesman to have his first call of the day be in Richmond, Virginia over 100 miles away. It seems to us, and the companies which use our services, that all of the trips made by such a driver to make business calls would be business use. Uncertainty exists among many employers since several years ago Treasury issued a never-finalized regulation which would treat such a Washington to Richmond trip as commuting or personal miles. We do not support such a determination but are uncertain as to Treasury's current position. Obviously such a determination is crucial to the issue now before the Committee and needs to be addressed.

Companies which utilize large fleets of vehicles have significant concerns regarding their withholding obligations which require immediate action by the Committee. The Treasury's proposed regulations require that quarterly withholding filings and payments must be based upon actual driver records unless the safe harbor percentage is used but do not permit the employer to make a good faith estimate of personal use in meeting these quarterly obligations.

It is simply not possible for companies to gather information from drivers all across the country, analyze the data and compute the taxable fringe benefit during the period from the end of a calendar quarter until the due date of the employer's quarterly filing and payment obligations.

I'm not certain of Treasury's reasons for requiring exact mileage information as the basis for the quarterly filing. Since the withholding rate is a uniform twenty percent, even if employers could overcome the data collection and computation problems, the amount of tax paid on behalf of an employee would always be an estimate subject to year-end adjustments when the employee files his personal tax return.

PH&H urges the Committee to reduce employers' concerns of penalties generated by improper quarterly filings by permitting them to make these filings based upon "good faith" estimates.

The Treasury's proposed regulations require employers to file their first quarterly return and payment by July 31, 1985. Compliance with that deadline requires a significant investment in changes to forms, computerized payroll systems and related procedures. Employers are naturally concerned about making such widespread and costly changes while issues such as I have described remain unresolved.

PH&H recommends that the Committee postpone employers' withholding obligations until at least six months after Treasury regulations are finalized on all issues relating to record keeping, valuation and withholding requirements.

The Committee should also know that some companies have responded to the series of Treasury regulations and the administrative burdens imposed thereby by stating that they will discontinue their policy of providing motor vehicles to employees. In the future these companies will require that all sales and service personnel

supply their own vehicles. If significant changes are not made to the statute or regulations, many more companies may join this movement. The adverse impact of such a movement on domestic manufacturers could be significant.

Today, commercial fleets are comprised almost totally of domestically produced vehicles and account for approximately twenty percent of Detroit's output. Our studies indicate that a fleet of vehicles independently purchased by salesmen for business use would contain a significantly higher percentage of foreign manufactured vehicles. We think it is reasonable to assume that this percentage would likely reflect the current trends of vehicle retail sales which would mean that tomorrow in excess of 30% of vehicles in the Nation's commercial fleets could be of foreign manufacture. Our studies also show that salesmen-owned vehicles remain in service for more than a year longer than company-provided vehicles. These two elements—more foreign vehicles in commercial fleets and slower vehicle replacement—are two significant negative impacts on domestic manufacturers which we feel should not occur as a result of Treasury's record keeping requirements.

Mr. Chairman, members of the Committee, I wish to again thank you for the opportunity to appear before you today on this issue which affects so many large and small companies across the country. I welcome the opportunity to try to respond to any questions on my testimony.

EXHIBIT A

PHH SUMMARY STATISTICS

LINES		COLUMNS									
		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
A	MONTHLY BUSINESS MILES TRAVELLED	Less Than 800	801- 1000	1,001- 1,200	1,201- 1,400	1,401- 1,600	1,601- 1,800	1,801- 2,000	2,001- 2,200	2,201- 2,400	More Than 2,400
B	NUMBER OF VEHICLES	2,833	3,261	4,814	5,729	6,588	6,398	5,875	5,086	4,276	11,516
C	PERCENT OF FLEET	5.0%	5.8%	8.5%	10.2%	11.7%	11.3%	10.4%	9.0%	7.6%	20.4%
D	AVERAGE BUSINESS MILES	633	908	1,106	1,300	1,499	1,698	1,898	2,097	2,297	2,874
E	AVERAGE PERSONAL MILES	428	345	319	298	294	282	274	262	260	231
F	AVERAGE COMBINED MILES	1,061	1,253	1,425	1,598	1,793	1,980	2,172	2,359	2,557	3,105
G	PERCENT PERSONAL MILES	40.3%	27.5%	22.4%	18.7%	16.4%	14.2%	12.6%	11.1%	10.2%	7.4%
H	TOTAL VEHICLES	56,376									
I	MONTHLY WEIGHTED AVERAGE BUSINESS MILES	1,827									
J	MONTHLY WEIGHTED AVERAGE PERSONAL MILES	284									
K	MONTHLY WEIGHTED AVERAGE COMBINED MILES	2,111									
L	WEIGHTED PERCENTAGE PERSONAL USE	13.47%									

EXHIBIT B

EXAMPLE 1

ASSUMPTIONS:	\$10,000	CAR
	2,700	BUSINESS MILES/MONTH
	300	PERSONAL MILES/MONTH
	\$ 3,100	ANNUAL LEASE VALUE
MINUS:	0	PERSONAL USE REIMBURSEMENT
MINUS:	2,790	WORKING CONDITION FRI
PLUS:	<u>198</u>	GASOLINE ALLOCATION (
	\$ 508	ANNUAL W-2 AMOUNT

EXAMPLE 2

ASSUMPTIONS:	\$10,000	CAR	
	700	BUSINESS MILES/MONTH	
	300	PERSONAL MILES/MONTH	
	\$ 3,100	ANNUAL LEASE VALUE	
MINUS:	0	PERSONAL USE REIMBURSEMENT	
MINUS	2,170	WORKING CONDITION FRINGE (3,100 X $\frac{700}{700}$)	
		<u>1,000</u>	
PLUS:	<u>198</u>	GASOLINE ALLOCATION (300 X .055 X 12)	
	\$ 1,128	ANNUAL W-2 AMOUNT	

QUINCY CORNING
FIBERGLAS

Complete and Return to Fleet Dept. - Toledo
**AUTOMOBILE EXPENSE
WORKSHEET
CLIENT 228**

APPROVAL SIGNATURE
Paul L. Hocking
REPORT FOR MONTH ENDING *Oct 1984*
BRANCH NAME *San Francisco*

SALES PERSON		LOCATION (CITY AND STATE)		YEAR & MAKE OF VEHICLE		VEHICLE NUMBER						
M. H. OWEN		FICES 40 CA		Buick '84		9889						
DATE	WEEKLY MILES	GASOLINE GALLS.	OIL & OIL CHANGES QTS.	MAINT. & REPAIRS* COST	TIRES & TIRE REPAIRS COST	PARKING & STORAGE COST	WASHING & CLEANING COST	TOLLS	LICENSE & TAXES	ACCIDENT REPAIRS	MISC **	TOTAL
1	7223	7.2	(9.25)									
2	8303	1.8	(14.86)				3.00					3.00
3												
4							1.00					1.00
5												
6												
7												
8												
9	8607	11.1	(14.30)									
10												
11												
12												
13												
14												
15												
16	8846	10.9	(13.40)			1.00						1.00
17												
18												
19		12.2	(15.06)									
20												
21												
22	9480	4.7	(8.50)									
23	9679	6.0	(7.40)									
24							3.00					3.00
25	9886	7.3	(9.37)									
26												
27												
28												
29												
30	10197	11.1	(14.34)			1.00						1.00
31												
TOTAL	2660	84.3	106.97			3.00	6.00					9.00
												11543

SPEEDOMETER READING THIS PERIOD		1-END 21		REMARKS		LESS PERSONAL USE FLAT RATE CHARGE		PLUS 'OVERAGE' VACATION MILEAGE		X10¢ PER MILE =	
		10360								145.00	
		7700									
MILES DRIVEN THIS PERIOD		3-TOTAL (1 LESS 2)									
		2660									
		PERSONAL 22 BUSINESS									
		400 2260									

NET COMPANY VEHICLE EXPENSE \$36.07

TRAVEL ORDER #/AMOUNT \$

CASH DUE EMPLOYEE \$

CASH DUE COMPANY \$36.07

CHARGE AC NO. 660-8374 EMPLOYEE # 6642

Staple Travel Order to Top of Yellow.
Staple Check to Top of Yellow.
Staple Receipts to Back of White.

Please circle all purchases made on your PHM service card for gasoline and oil.

*DO NOT INCLUDE ACCIDENT REPAIRS
**EXPLAIN UNDER REMARKS

150

UC-48-71B-475

Distribution: white - Leasing Co copy yellow - O.C. copy pink - salesperson copy

HOBART

WORLD HEADQUARTERS TROY, OHIO 46074

VOUCHER NO. (8-14)

VENDOR
MAINTENANCE NO. (15-21)**AUTO EXPENSE REPORT**

NAME: LAWRENCE A. WILK AREA NAME: CENTRAL EAST REGION NAME: TEERE HOUTE YEAR/MAKE OF: 84 FORD
 ADDRESS: 825 N. 3RD AREA NO.: 05 REGION NO.: 65-570 CAR NO.: 4903
 ICC CODE: 01 TRANS. CODE: 060 FOR MONTH ENDING (DATE): 11-30-84 PAYMENT DUE DATE (43-48): 12/3/84 BANK NO.: 900 GROSS AMOUNT (\$975): 104.89 HOLD (REMA) (96): 3

DATE	BUSINESS MILES	GASOLINE GALS.	COST	OIL/CHANGES QTS.	COST	MAINT. AND REPAIRS*	TIRES AND TIRE REPAIRS	PARKING AND STORAGE	WASHING AND CLEANING	TOLLS	LICENSE AND USE TAX	ACCIDENT REPAIRS	MISC.**	TOT.
1	60													
2	80													
3														
4														
5	260	12.2	13.90											13
6														
7														
8	260	11.4	12.25											12
9	85													
10		11.3	13.20											13
11														
12	75													
13	195	12.2	14.00											14
14	60													
15	75													
16	80					55.99								55
17														
18														
19	150	12.29	13.75											13
20	185	12.6	14.25											14
21	40													
22	75													
23	100	1	4.5	17.80										17
24		10.7	12.25											12
25														
26	40													
27	135	10.7	12.60											12
28	65													
29	140	13.9	15.50											15
30	150													
31														
32	2310	107.23	121.10		17.80	55.99								

ODOMETER READING THIS PERIOD: 1- END 31085 2- START 28396 3- TOTAL (1 MINUS 2) 2689 PERSONAL 379 BUSINESS 2310
 SIGNATURE OF PREPARER: LAWRENCE A. WILK AMOUNT TO BE REIMBURSED: 194
 AUDITED BY: K. Baker
 ** DO NOT INCLUDE ACCIDENT REPAIRS
 ** EXPLAIN UNDER "REMARKS"

DATE	ACCOUNT	AMOUNT	PROJECT
04	1210	250	05
06			07
08			09
10			11
12			13

REMARKS:

APL 816
 55.99 Turn engine service
 C.C.S.

APPROVAL (MGR.): APPROVAL (FLEET): APPROVAL (TREASURY):

F-175 (81-84)

COPY 1 - WHITE - FLEET DEPT.

COPY 2 - YELLOW - P.H.H.

MED. NICK SHARP & DOWNE
 25 22 19/90

REPORT FOR PERIOD ENDING	Nov 30
REGION	WESTERN

AUTOMOBILE EXPENSE WORKSHEET

SALESMAN		TERM. NO.		YEAR & MAKE OF CAR		CASE NUMBER				
Charles Barker		2659		83 LTD		3052				
DATE	DAILY BUSINESS MILES	GASOLINE	OIL & OIL CHANGES	MAINT. & REPAIRS *	TIRES & TIRE REPAIR	PARKING & STORAGE	TOLLS	LICENSE & TAXES	MISC. **	TOT
1	156	15.3	19.00							
2	159									
3	192	15.6	19.02							
4										
5	170									
6	167	15.9	20.10							
7	153									
8	140	13.2	16.30							
9										
10										
11										
12	159									
13	139	17.4	21.50							
14	127									
15	134	16.1	19.65							
16										
17										
18										
19	136	16.3	20.10							
20	142									
21	148									
22										
23		17.0	21.00							
24										
25		14.0	17.11							
26	142									
27	40									
28										
29	37									
30	171	16.2	20.35							
31										
TOTAL	2512	157.0	194.33							194.33

SPEEDOMETER READING THIS PERIOD	1. END	40849	REMARKS:	LESS CURRENT CHARGE FOR PERSONAL MILEAGE @ 13 PER MILE	-5.5
	2. BEGINNING	37910		NET COMPANY AUTOMOBILE EXPENSE (POST TO EXPENSE BOOKLET)	138.
	3. TOTAL (1 LESS 2)	2939		*DO NOT INCLUDE ACCIDENT REPAIRS **EXPLAIN UNDER REMARKS	
MILES DRIVEN THIS PERIOD	LESS BUSINESS	2512			
	PERSONAL	427			

FORWARD TO BRANCH

EASTMAN KODAK COMPANY
AUTON-OBILE EXPENSE WORKSHEET - FOR COMPANY-OWNED VEHICLES
 PMH - MAINTENANCE CONTROL PROGRAM

DO NOT FILL IN FOR ANY VEHICLE NOT UNDER PMH EXPENSE CONTROL - 14
 USE BUSINESS EXPENSE REPORT FOR THERMAL CARS AND PERSONAL CARS

REPORT FOR WEEK ENDING 10-7-84 14-84 42									
MARKET DIVISION - SALES 14-84 42									
REGION AND/OR MAINTENANCE CENTER									
VEHICLE IDENTIFICATION - 801 14-84 42									
VEHICLE MAKE/TYPE - 81 BUICK									
VEHICLE YEAR - 81									
VEHICLE COLOR - 5833									
VEHICLE VIN - 1600									
VEHICLE LICENSE - 1950									
VEHICLE TOLLS - 13.00									
VEHICLE LEASE - 2.00									
VEHICLE MAINTENANCE - 35.50									
VEHICLE REPAIRS - 1.00									
VEHICLE STORAGE - 1.00									
VEHICLE PARKING - 3.00									
VEHICLE TRAVEL - 13.00									
VEHICLE OTHER - 2.00									
VEHICLE TOTAL - 16.00									
VEHICLE NET COMPANY CAR EXPENSE - 51.50									
VEHICLE SUMMARY									
TOTAL VEHICLE EXPENSES									
LESS: TOTAL PERSONAL									
MILES @ 11 CENTS PER MILE									
STANDING EXPENSE									
PERSONAL USE DEDUCTION									
NET COMPANY CAR EXPENSE									

Please see other side for instructions. Numbers preprinted on this form refer to numbered instructions on reverse side.

14.5

Mr. JONES. Thank you very much.

I want to get an interplay after we are through with the final panelist.

Mr. Shapiro.

**STATEMENT OF IRA H. SHAPIRO, DIRECTOR OF TAX POLICY,
COOPERS & LYBRAND**

Mr. SHAPIRO. I am Ira H. Shapiro, the director of tax policy for Coopers & Lybrand. We are an international accounting firm with 95 offices throughout the United States. I am testifying before you today on behalf of my firm.

Part of our role here in the Washington office is to advise our clients and our 95 offices on how to comply with changes in the code and changes in the regulations. We have had our hands full in dealing with these provisions when they emerged as legislation and then as regulations.

We believe we have some views on the matter that may be of benefit. We view the nature of the problem to be manifold. Part of it is inherently in the structure of the code as you are trying to correlate rules in a number of different areas—compensation, working condition exclusion, recordkeeping, and the limitations on ACRS and ITC.

We also feel that there is an issue in drawing up such a finite set of regulations because of the large number of persons to whom it would apply. You have employers, employees and self-employed people. Then you have all kinds of applications of it, to manufacturing companies, large and small companies, construction companies, municipal employees and I could go on.

We think another part of the problem, and maybe the most significant part, is the regulatory approach. That is that everyone, unless you meet an exception, must keep highly detailed records, and furthermore, there seems to be a premium on a high degree of precision and exactitude. There is a low tolerance for errors. All of this is necessary to determine business use on the one hand and valuation and compensation issues on the other.

These items we believe underpin some of the problems that have been referred to by the speakers today. We have analyzed the regulations and we have commented on a number of areas where we think they can be improved. We have covered that in our statement, and we intend to provide that to Treasury as well at the appropriate time.

I would like to skip through that now, though, to get to what we think is the nub of the issue. That is, even if these changes were made to the current set of regulations, we believe there would still be an inherent problem in dealing with the compliance issues for those who, in good faith, want to attempt to comply with it, dealing with the issues of cost and burden.

Therefore, we have attempted to provide some alternatives. You might call it repeal. You might call it a middle ground, but at least it is different than the existing set of regulations.

The first part of this is bottomed on a premise that we can accomplish 90 percent of the objective with 30 percent of effort. First

of all, in order to do that, there must be a willingness to accept somewhat less precision than is in the existing rules.

Second, there must be a willingness to adopt broader-based rules. Once this is done, I believe you can have a system that is based upon less rigorous records than are proposed in the current system—perhaps the pre-1984 rules or perhaps something more than the pre-1984 rules, perhaps a monthly summary of some kind with adequate documentation to back that up, but certainly not the detailed records that are required for each trip.

Again, I am speaking of applying this to the broad base of people. There is nothing here against, and we would support, specific exceptions for municipal employees that you heard from today and better definitions for commuter rules.

But what I am talking about is a broad-based system that would deal with adequately most of the other people involved, and what we would propose is reliance on broad bands of personal use. For example, and I have it on page 3 of the outline, you might have a band of 10 to 30 percent of personal use, 30 to 50 percent and so on. You could use any set of numbers as long as the bands are wide enough. There is not as much of a premium then on keeping the detailed records. As long as you can show you fall in that band. Then there a matrix is used, based on the value of the car, to come up with the dollar amount of compensation.

One of the critical issues in any change from the present system is what kind of records will be needed to deal with the very difficult compensation issues, let alone the deduction issues. We would urge that this system be applied across the board. If someone felt they did not get the proper amount out of the system, then they could keep the minutely detailed records to get higher amounts.

Basically you would establish wide bands and then you would target the dollar amount based on the midpoint of that band. In addition to dealing with compensation issues, you could use this approach as well for the self-employed, to determine what their personal use is.

One final point. Using the same system, if you do not want to apply it across the board, it could be used for some groups. There is already a policy in the code of dealing with automobiles of more than approximately \$16,500 differently than automobiles of less than \$16,500. We would suggest a similar kind of relaxed record-keeping system for all automobiles of less than \$16,500 so that, again, you are dealing with large numbers of people and carving them out on some more rational approach, easier to live with system than is in the existing set of rules.

Thank you.

[The prepared statement follows:]

STATEMENT OF IRA H. SHAPIRO, NATIONAL DIRECTOR OF TAX POLICY, COOPERS & LYBRAND

I. INTRODUCTION

I am Ira H. Shapiro, Director of Tax Policy for Coopers & Lybrand, an international accounting firm, with 95 offices throughout the United States. I am testifying before you today on behalf of my firm.

A major part of our role in the National Tax office of Coopers & Lybrand is to advise our practice offices and our clients on compliance aspects of new legislation

and IRS regulations, rules and procedures. We have, therefore, spent a considerable amount of time analyzing the relevant Code provisions and the temporary and proposed regulations that are the subject of today's hearing and an even greater amount of time responding to questions and attempting to find answers to a variety of issues raised by our practice offices.

Concerns about the potential for overstatement of business expenses and about compliance with the prior law's recordkeeping requirements led Congress in the Tax Reform Act of 1984 to enact new rules to strengthen the recordkeeping requirements in order to better substantiate business use of automobiles and certain other property. In recent months, through temporary and proposed regulations, the Treasury Department and the Internal Revenue Service have begun interpreting the new recordkeeping rules. In general, Treasury and IRS have done a commendable job on a less than enviable task in a short period of time. However, as the Committee is well aware, these regulations have been severely criticized for their complexity and for the enormous increase in recordkeeping burdens that they will impose on a very large number of employers, employees and businesses generally. As a result of these criticisms, many in and out of Congress have urged the repeal of the recordkeeping requirements newly imposed by the 1984 Act. The implications of such a repeal are not clear. However, we recognize that a reversion to the prior law's recordkeeping requirements does not address all of the issues that must be faced in the related provisions of Code §§ 61,132 and 280F, particularly with regard to determining employee compensation.

Our purpose today is to identify what we see as the major problems in this area. Where we can, we have tried to suggest some simplifying modifications to the proposed regulations that may deserve further consideration by the Committee or the Department of Treasury.

However, we also believe that given the nature of the problem, the regulatory approach being pursued by Treasury will remain unacceptably complex, even if these modifications are made. Accordingly, we have also considered some alternative approaches that we believe would be simpler to implement, although with some sacrifice in precision. We believe that a more general approach is necessary to implement the statutory changes made in the 1984 Act in a less complex manner with a more positive effect on compliance. Although Treasury may have the authority to adopt such changes, they may be reluctant to do so without Congressional concurrence.

II. MAJOR SOURCES OF COMPLEXITY

We have come to the conclusion that a major source of the problems that have arisen under the proposed regulations is the nature of the universe which is being regulated. A very large number of employees, employers, the self-employed and businesses generally are affected. Further, the range of fact patterns is almost infinite.

Consider for a moment that these rules apply to both the largest and smallest of corporations, partnerships, and all manner of sole proprietorships. They also apply to activities as diverse as manufacturing companies, construction concerns, and all sorts of sales and delivery operation as well as the small real estate office or hardware store. It is going to be most difficult under any circumstances to develop a set of precise rules that works equally well for all of these affected groups.

The present situation is further complicated by the fact that we are really dealing with regulations that impact a number of Code sections. New regulations are proposed under Code §§ 61 and 132 on compensation and the working condition exclusion, under Code § 274(d) on recordkeeping, and under Code § 280F, limiting ITC and ACRS deductions for certain automobiles. We have found that much of the complexity and confusion about the temporary regulations results from the interaction of the various Code provisions and the regulations that have been promulgated to implement them.

The final factor which adds complexity is the regulations themselves and the regulatory framework Treasury has adopted. These regulations reflect a desire to reach exactitude in recordkeeping, to permit a large number of options in the methods available to employers and employees for recordkeeping and valuation purposes, and to allow a low tolerance for error in valuing any employee benefit involved. The tone is established by the general requirement that, unless an exception applies, *all* taxpayers who use an automobile for both business and personal purposes are required to keep detailed "adequate contemporaneous records" in order to substantiate any deduction or credit for business use.

Complexity has resulted from attempting to achieve these high standards for precision in the diverse environment we have described. On an individual level, the difficulties become first one of definitions—figuring out where you fit—and second one of interpreting what set of rules then applies to your situation and what the compliance requirements are.

The proposed regulations themselves can be improved and some of the confusion reduced. We have, in Section IV of this statement, discussed a number of areas where we believe the regulations can be improved to achieve greater consistency, solve definitional problems and address issues of implementation. These areas are as follows: consistency in definitions and applications; uniformity between employers and employees; clarification of safe harbors; establishing values for employees; and improvements in implementation.

Nevertheless, we have concluded that the proposed regulations, even if modified as we suggest, will inevitably remain complex as long as the Congress and the Treasury seek great precision in an area such as this where there is such diversity. Congress and Treasury must also be cognizant of the very real concerns expressed by some that the added costs and administrative burdens of complex rules in this area may well exceed any net benefit to the government. When tax rules are difficult to comply with, or seem unreasonable, we believe a cost is also exacted in willingness to comply and in taxpayer attitudes towards our voluntary compliance tax system generally.

III ALTERNATIVE APPROACHES

Because of our belief that the regulatory approach adopted by Treasury to implement the 1984 Act is inherently complex, we have also attempted to consider whether other approaches would afford greater simplicity without sacrificing too much in equity or precision and which would nevertheless be consistent with the legislative policies enacted last year. Our suggestions involve the use of less precise but simpler approaches which in turn permit less rigorous recordkeeping. While not without disadvantages, the alternatives provide a rational approach to contribute to a resolution of the present dilemma.

Our basic suggestion is that the Committee and the Treasury permit less rigorous recordkeeping in the circumstances described below. Such a modified requirement would be something less than a complete and detailed contemporaneous business use log, but something more than that permitted to suffice as corroborative evidence under prior law. For example, such a system might allow use of monthly summaries, along with other documentary evidence. We believe that use of the simpler approaches we are suggesting would achieve both greater compliance and the original policy objectives of the 1984 Act. Since the negligence penalty of Code § 6653(h) has been extended to apply to failures to maintain the records necessary to substantiate one's deductions, under whatever recordkeeping standards are required under Code § 274(d), taxpayers will have an important incentive to maintain documentary evidence to substantiate business use. If a relaxed recordkeeping standard were applied to most individuals, or at least to large groups of taxpayers, a more acceptable regulatory scheme would result.

Our first and preferred approach is to assign fixed dollar amounts with regard to broad ranges of personal use of vehicles. These amounts would be determined on the basis of broad ranges of values for the particular vehicles used. Such an approach would be a simple and efficient means to determine employee compensation for employer-provided vehicles.

A resulting table would be produced that might look something like the following:

COMPENSATION AMOUNTS

Percentage of personal use	Fair market value of vehicle				
	0 to \$5,000	\$5,000 to \$7,500	\$7,500 to \$10,000	\$10,000 to \$12,500	\$20,000 to \$25,000
10 percent or less	X	X	X	X	X
> 10 percent and < 30 percent	X	X	X	X	X
> 30 percent and < 50 percent	X	X	X	X	X
> 50 percent and < 70 percent	X	X	X	X	X
> 70 percent and < 90 percent	X	X	X	X	X
> 90 percent and < 100 percent	X	X	X	X	X

The midpoint of the ranges in the first column of this table could also be used to determine the percentage of business use for employer-furnished vehicles to 5%-or-more owner-employees, as well as employees and the self-employed using their own vehicles. Use of such an approach would not preclude keeping more detailed records for those who desire to justify a more precise percentage of business use.

A variation on this theme would extend the policy of IRC Code § 280F by using the modified recordkeeping requirement for all vehicles valued at \$16,500 or less. We would expect that the application of the modified requirement to these vehicles would permit a majority of business vehicles to use less burdensome recordkeeping rules. For more expensive vehicles, which were the initial source of concern of this Committee, more detailed records could be required.

In our judgment, it would be easier under either of these approaches to achieve consistency between the methods used by the employer and employee for reporting, withholding and return preparation purposes. It would also be feasible to require that withholding during the year be based on an assumed percentage of personal use. Adjustments in withholding to reflect the actual percentage of personal use could be made during and at the end of the year. The safe harbors proposed in the temporary regulations for pool cars, multiple-stops, commuting and farming should remain available.

We recognize that these alternatives require trade-offs between simplicity and precision. They are offered as constructive suggestions for simpler approaches to complex issues with overriding policy concerns. However, we believe the current dilemma is one in which the equation between precision and simplification should be weighted more heavily on the simplification side in order to achieve the goal of developing rules which can be administered and with which taxpayers can comply with a reasonable degree of effort.

IV. AREAS FOR IMPROVEMENTS IN PROPOSED REGULATIONS

As noted earlier, there are areas where the proposed regulations could be improved and made less complex and confusing. We have organized our comments on the specifics of the regulations into five categories. These comments are included for illustrative purposes and to emphasize some of the more important issues we have identified. Our presentation today is not comprehensive, but we intend to prepare a more detailed submission on these matters at the time of the IRS public hearing.

A. Improve consistency in definitions and applications of the regulations that apply across code sections

Part of the confusion in this subject area stems from the fact that regulations are needed to implement related provisions of Code §§ 61 and 132, 274(d) and 280F. In the initial regulations many discrepancies were created in the rules and definitions as they applied under these different Code sections. These inconsistencies in turn created confusion about the intent—was it an error or oversight, or was there a real policy reason for a different rule, definition or application of a rule? The revised regulations solved many of these problems but some inconsistencies still exist that we find troublesome and unnecessary. We have illustrated several examples of such inconsistencies in Table 1 attached. We recommend that the various provisions be conformed to eliminate all unnecessary differences and to obviate problems created by different effective dates.

B. Seek more uniformity between employers and employees

The second table we have attached to our statement illustrates the number of recordkeeping options available to both employers and employees under the proposed regulations.

We recognize the need for flexibility on the part of employers and employees to substantiate their business use. This allows employees to insure that the least amount of compensation for the personal use of the automobile will be included in their incomes. However, additional complexity is inherent with any recordkeeping system that gives employers and employees different options for substantiating their business use. In the present case, confusion has also been added as individuals attempt to interpret the rules and apply them to their circumstances.

We suggest that Congress review the degree of flexibility desired and that consideration be given to imposing more uniformity between employers and employees, including the use of safe harbors.

C. Clarify safe harbor record requirements

Where the regulations provide for optional safe harbors to meet the recordkeeping requirements, they also impose new evidentiary requirements to show that the safe harbor actually will apply. Taxpayers cannot be sure that any safe harbor they use will not be successfully challenged. Therefore, if employers rely on a safe harbor and their employees keep no records, and later the IRS determines the safe harbor is not available, their deductions and credits computed on the basis of the safe harbor would be denied. Thus, the requirements for meeting safe harbors must be clear and create no uncertainties. Further, the recordkeeping requirements for the safe harbors *per se* should not be unduly burdensome.

D. Establishing values for employees

Questions have also been raised about the added complexity that is introduced by requiring fair market values for automobiles to be established for employees separate from the employer's actual cost. Accordingly, we would recommend the Committee and the Treasury consider adopting the employer's cost as the value standard in this area where so many taxpayers are affected and where variations between stated price and actual negotiated purchase price are so common. If this is not possible, to the extent that annual lease tables are retained, the bracket amounts reflected in the table might be increased from \$1,000 to \$2,000 increments to accommodate any discrepancies in vehicle pricing.

E. Improve implementation

Implementation of the new rules has been nothing short of traumatic for many taxpayers. Clearly the new recordkeeping rules have caught many off guard. As certified public accountants, we have found that one of our more difficult tasks is educating our clients as to the requirements imposed by the new rules. In turn, employers must spend a significant amount of time educating their employees on detailed requirements and in monitoring whether in fact their employees are complying with the new rules. As we discussed above, the complexity of the new rules has only contributed to confusion on the part of employers and employees, and thereby has increased the difficulty in achieving uniform compliance.

A major problem with implementing the new rules is withholding on the compensation that results from the personal use of employer-provided automobiles. Employers have already recognized that it will be extremely difficult to analyze their employees' records of business use of employer-provided automobiles on a timely basis in order to withhold on the proper amount of compensation. In some instances it may be necessary for employers to hire additional employees just to process the records generated by employees provided with automobiles. The new recordkeeping rules have created an extremely burdensome administrative task for employers to process records kept by their employees.

In addition, where employers and employees use different options under the recordkeeping rules, compensation determined by the employer might not be consistent with an alternatively acceptable method used by the employee. Therefore, discrepancies will occur between the amount of income the employee reports on the Form 1040 and the amount of compensation the employer reflects on the employee's W-2. These differences can only create administrative difficulties for the IRS, employers and employees in reconciling differences. We suggest that this problem should be resolved by modifying either the IRS Form 1040 or W-2 to permit reconciliation of these differences. To further alleviate any discrepancies, adjustments to amounts withheld should be permitted during and at the end of the year, to account for actual amounts of personal use based on the employee's records.

Investment credit recapture raises another implementation problem. Where the percentage of business use of listed property declines from the percentage of business use in the year the property was purchased, the taxpayer must recapture investment tax credits unless the decline in business use occurs after the recovery period. Thus, even if the decline is only 1 or 2 percentage points (e.g., 80% to 79% or 78%), the taxpayer must perform a detailed calculation to determine a small amount of recapture tax. We recommend that the term "de minimis" be quantitatively defined, e.g., 10%, to alleviate recapture complications for minor changes in business use.

V. CONCLUSION

In conclusion, we do not think the basic complexity of the proposed regulations can be significantly reduced by the modifications we have recommended. Nevertheless, these changes would improve the regulations and would reduce confusion among those attempting to comply with them.

Finally, we emphasize again our belief that more basic changes are needed to the present regulatory strategy. We hope our suggestions will be helpful to you in resolving these difficulties.

EXAMPLES OF INCONSISTENCIES AND/OR DEFINITIONAL PROBLEMS
UNDER THE PROPOSED REGULATIONS

Prepared by
Coopers & Lybrand
March 5, 1985

<u>Item</u>	<u>Sections Affected</u>	<u>Description</u>
1. Requirements of commuting exception (i.e., no personal use)	SS61 & 274	<ul style="list-style-type: none"> • Rule contained in Prop. Regs. under §274 but not in §61: Vehicle must be made available for use by one or more employees in connection with employer's business. • Difference in rule limiting personal use to commuting and de minimis use: <ul style="list-style-type: none"> • Prop. Regs. §274 - Employer must have reasonable belief that use is so limited. • Prop. Regs. §61 - No such belief is required of employer. • Difference in effective date for 1% owner rule: <ul style="list-style-type: none"> • Prop. Regs. §274 - 1% or more owner is precluded from using commuting exception effective January 1, 1985. • Prop. Regs. §61 - a 5% or more owner is precluded from using the commuting rule for the period January 1, 1985 through March 22, 1985, but this changes to 1% owners thereafter.
2. Definition of road vehicles	SS61, 274 & 280F	<ul style="list-style-type: none"> • Prop. Regs. §61 - Two categories of road vehicles are distinguished based only on whether or not a vehicle has four wheels. • Prop. Regs. §274 - Two categories of road vehicles are distinguished based on whether or not a vehicle is a passenger auto (defined under §280F) and designed for commercial use including trucks and vans without regard to gross vehicle weight. • Prop. Regs. §280F - Two categories of vehicles are distinguished based on whether or not a vehicle has four wheels and has a gross vehicle weight of 6,000 pounds or less.

<u>Item</u>	<u>Sections Affected</u>	<u>Description</u>
3. Effective date of recordkeeping rules for purposes of working condition fringe benefit	\$561, 132 & 274	<ul style="list-style-type: none"> Prop. regs. prohibit employees from using recordkeeping exceptions until the employer is required to keep records under §274 (i.e., tax years beginning after 1984). Result: <ul style="list-style-type: none"> Employees of fiscal year employers receive compensation beginning 1/1/85 under new rules but are subject to prior law recordkeeping rules for a short period in 1985. Employees should be permitted to use §274 exceptions. Unless the employer withholds within a reasonable period of time after the payroll tax return due date, the employee will be in receipt of additional compensation. "Reasonable period" needs to be defined. Under the annual lease value method, gasoline may be valued at 5 1/2¢ per mile or at actual cost for compensation purposes. Instead of the annual lease value method, under general valuation principles, gasoline may be valued only at actual cost for compensation purposes. Prop. Regs. do not define the term "officer." §280F uses a 5% owner concept, but generally, the exceptions under §61 and §274 use a 1% owner test.
4. Definition of reasonable period of time for withholding purposes	\$3501	
5. 5 1/2¢ per mile gasoline valuation rule	\$61	
6. Definition of officers	\$561, 132, 274, 280F	

Table 2

**OPTIONS AVAILABLE TO EMPLOYERS AND EMPLOYEES
UNDER IRC §61, 132 AND 274(d)**

1 of 4

Prepared by
Coopers & Lybrand
March 5, 1985

<u>Recordkeeping Method</u> (IRC §274(d))	<u>Amount of</u> <u>Working Condition Fringe</u> (IRC §132 Exclusion)	<u>Amount of</u> <u>Compensation¹</u> (IRC §61)	<u>Notes</u>
<u>Employer²</u>	<u>Employee</u>	<u>Employer</u>	<u>Employee</u>
<u>I. GENERAL RULE</u>			
Business use log	Business use log	Value of availability times business use percentage	Same as employer
<u>III. EXCEPTIONS</u>			
<u>A. Commuting exception</u>			
No log	No log	Value of availability for use other than commuting	\$3/day
	OR		OR
Business use log	Business use log	Value of availability times actual business use percentage	Value of availability times actual personal use percentage
			<ul style="list-style-type: none">- Evidence requirement- Differences in requirements between IRC §61 compensation and §274 record-keeping:- Use by person whose use would be attributed to employee- No reasonable belief requirement on employer- One-percent owners can use \$3/day rule for compensation for 1/1/85 to 3/22/85

<u>Recordkeeping Method</u> (IRC §274(d))	<u>Employer²</u>	<u>Employee³</u>	<u>Amount of Working Condition Fringe</u> (IRC §132 Exclusion)	<u>Employer</u>	<u>Employee</u>	<u>Amount of Compensation¹</u> (IRC §61)	<u>Employer</u>	<u>Employee</u>	<u>Notes</u>
B. No personal use exception									
No log	No log		Value of total availability	Same as employer ⁴		-0-	-0-		• Evidence requirement • Employee has additional income if personal use without employer's knowledge
	OR			OR			OR		
	Business use log			Value of availability times actual business use percentage			Value of availability times actual personal use percentage		
C. Multiple stops exception									
No log	No log		Value of availability times safe harbor business percentage ⁵	Same as employer ⁴		Value of availability times safe harbor personal percentage ⁶	Same as employer		• Evidence requirement
	OR		OR	OR		OR	OR		
Personal use log	Personal use log or business use log		Value of availability times actual business use percentage	Same as employer ⁴		Value of availability times actual personal use percentage	Same as employer		
(Employer and employee may use different recordkeeping methods)									

<u>Recordkeeping Method</u> <u>(IRC §274(d))</u>		<u>Amount of</u> <u>Working Condition Fringe</u> <u>(IRC §132 Exclusion)</u>		<u>Amount of</u> <u>Compensation¹</u> <u>(IRC §61)</u>		<u>Notes</u>
<u>Employer²</u>	<u>Empee³</u>	<u>Employer</u>	<u>Empee</u>	<u>Employer</u>	<u>Empee</u>	
D. Farming exception						
No log	No log	Value of availability times safe harbor business percentage ⁵	Same as employer ⁴	Value of availability times safe harbor personal percentage ⁶	Same as employer	Evidence requirement
OR	OR	OR	OR	OR	OR	
Personal use log	Personal use log or business use log	Value of availability times actual business use percentage	Same as employer ⁴	Value of availability times actual personal use percentage	Same as employer	
(Employer and employee may use different recordkeeping methods)						
E. Highly paid employee						
No log	Business use log, OR if one of the above exceptions applies, personal use log or no log	-0-	Depends on records maintained	Total value of availability	Depends on records maintained	

<u>Recordkeeping Method</u> (IRC §274(d))		<u>Amount of</u> <u>Working Condition Fringe</u> (IRC §132 Exclusion)		<u>Amount of</u> <u>Compensation</u> ¹ (IRC §61)		<u>Notes</u>
<u>Employer</u> ²	<u>Employee</u> ³	<u>Employer</u>	<u>Employee</u>	<u>Employer</u>	<u>Employee</u>	
F. No records after request						
No log	Business use log OR if one of the above exceptions applies, personal use log or no log	-0-	Depends on records maintained	Total value of availability	Depends on records maintained	• Issue regarding whether employee can take deductions on Form 2106 since he may have forfeited his right to reimbursement
G. Inaccurate employee records						
No log	Same as above	-0-	Depends on records maintained	Total value of availability	Depends on records maintained	• Employee may lose any working condition fringe deductions upon audit if records are not adequate
H. Records indicating no business use						
No log	Same as above	-0-	-0-	Total value of availability	Total value of availability	

¹Value of availability less working condition fringe benefit.

²Employer uses this method for purposes of determining the amount to be reported on the employee's W-2.

³Employee uses this method for purposes of determining the amount to be reported on his Form 1040.

⁴Employee must include in income the amount allocated to by employer under the employer's method of determining working condition fringe benefit.

⁵80% or 70% depending on the type of vehicle.

⁶20% or 30% depending on the type of vehicle.

NOTES: "Log" includes all other records accepted by the IRS as adequate contemporaneous records, such as trip cards, a statement by the employee, etc.

Mr. JONES. Thank you very much.

I think all of your testimony was helpful. What I would like to do is ask Mr. Kastengren to reply. You and Mr. Arbaugh were in pretty much direct conflict on your approach to this subject.

Where do you find faults in Mr. Arbaugh's argument that he made, because your view of the facts seem to be diametrically opposed?

Mr. KASTENGREN. Mr. Jones, actually I think that there are several parts of our testimony where I feel in agreement with Gene. I think that the business community in general does want to comply.

I think that the single area that I found I was in opposition to as I heard what he was saying would be the relaxation of the safe harbor to an 85 percent level. I think we find that 70 percent is a reasonable safe harbor level, and if somebody wants to prove that they, in fact, use the car more than 70 percent for business, then contemporaneous or timely records would be the way to prove it.

We do not agree with strict or onerous contemporary recordkeeping. We do not think that is what the Treasury Department or the IRS really had in mind. We think that as long as the business miles are recorded, that suffices for contemporaneous recordkeeping, and it needs to be only one entry per day or about a minute or a minute and a half per day entry so we are not talking about the onerous contemporaneous recordkeeping that we heard all morning today.

Mr. JONES. Mr. Arbaugh, would you like to reply?

Mr. ARBAUGH. I would like to make two points. First of all, we maintain detailed records on 100,000 of our vehicles where we actually track the business and personal miles. If the purpose of the safe harbor is to eliminate recordkeeping it just does not satisfy that requirement because what happens is 85 percent of the drivers would be required to keep the records in order to get justification for more business use.

The other thing I would like to point out to the committee that in addition to the driver keeping the records, one of the big problems is that corporate America is not geared up to capture that personal mileage, take it inhouse and in the month following the quarter, capture that information on the company's W-2.

In order to comply with the regulations, they must write computer systems to capture business miles. The current recordkeeping requirements cause tremendous changes in the accounting and payroll departments, and that is where a great deal of the expense and problems arise.

Mr. JONES. Business tells us they are going to have to increase their costs to keep these records maybe more than \$1 billion. Is that a reasonable estimate, and if so, is it reasonable to expect that they will deduct a good many of those expenses and the Treasury will not receive the additional revenue that they seek from compliance of these regulations?

Mr. ARBAUGH. Yes, there would be considerable business expense. It is going to take major investments in information systems to capture the needed information. One of the major concerns the time frame in which the data must be captured. It is just very difficult to produce accurate information 1 month after the calendar quarter ends because you need to collect raw data from the field,

and, since a lot of these men work out of their homes or branch offices, that information does not get back to the home office within the time frame needed.

Mr. KASTENGREN. Mr. Chairman, may I add to that? I think there is a mix of problems here, and the problem is primarily not with the contemporaneous recordkeeping perhaps but with the withholding, and the quarterly withholding certainly is seen as a major problem by corporations.

So if that quarterly withholding could be attacked as a separate issue from the contemporaneous recordkeeping, I think you might find that it is a bigger issue, a bigger problem, because the adjustments each quarter would be very time-consuming.

Mr. JONES. Mr. Duncan.

Mr. DUNCAN. I have no questions. Thank you.

Mr. JONES. Mr. Shapiro, do you want to add anything to what has been said?

Mr. SHAPIRO. No, nothing more.

Mr. JONES. Thank you all very much for your testimony.

The next panel, representing Small Business United, John Galles, executive director for the Small Business Association of Michigan.

The National Small Business Association, James McCarthy, director of tax policy.

The National Federation of Independent Business, John J. Motley, director, Federal legislation.

Don Alexander, representing the Chamber of Commerce of the United States, and also the former distinguished Director of the IRS, and he is representing the NAM and the Wholesaler-Distributors.

And Toni Hengesteg from Economics Laboratory, Inc.

Welcome, Mr. Galles, if you will proceed ahead. All of the testimony will be included in its entirety and you will have 5 minutes to summarize.

STATEMENT OF JOHN GALLES, EXECUTIVE DIRECTOR, SMALL BUSINESS ASSOCIATION OF MICHIGAN, REPRESENTING SMALL BUSINESS UNITED

Mr. GALLES. Thank you, sir. We have submitted testimony to the committee, and I believe there are copies available through your counsel.

Good afternoon. My name is John Galles. I am executive director of the Small Business Association of Michigan which represents 2,500 small firms throughout our State. Our association is a member of Small Business United, a national small business advocacy group which represents small business organizations in 35 States. I am speaking today on behalf of Small Business United and the small businesses which it serves.

First of all, I would like to point out that small businesses are more than willing to pay their fair share of taxes, whether it be for fringe benefits or for such items as unemployment and workers compensation insurance. What concerns small business owners is that they often end up paying a relatively higher cost in proportion

to their payroll than do large firms for a variety of taxes and government regulations.

Unless you repeal these regulations, we encourage you to allow small businesses a large degree of flexibility under these regulations in order to insure fair treatment of small firms throughout the Nation.

In the introduction of the State of Small Business, the report of the President, presented March 1984, President Reagan wrote: "Regulation, when it is necessary, is increasingly achieved with a maximum of flexibility and common sense and a minimum of extraneous costs and burdens."

The regulation under scrutiny here does not appear to fulfill these standards. At a time when there appears to be a grassroots movement calling for a simplification of the Tax Code this move seems highly inappropriate.

For most small businesses, this requirement only makes the process of filing taxes that much more complex. It ends up making them less efficient, less productive and less competitive.

I would also like to point out that there is an extremely fine line between business and personal use of autos for many small business, especially family-run firms or sole proprietorships. Many small business people are almost never off the job because they combine meetings with meals and business contacts with trips.

Because small businesses are unique in size and character, I propose that the Treasury Department grant small businesses more flexibility in complying with these recordkeeping regulations. I would propose that such items as the 70/30 split offered to special categories of business owners such as farmers and people in sales and service profession be expanded to include all businesses which have fewer than 250 employees or have a gross sales of less than \$6 million per year.

I would further like to suggest that the standard deduction is too low for many small business people and should be increased to at least 80/20 split. On the other hand, there are those businesses which would prefer, for business reasons, to calculate a 50/50 split.

No one is disputing the fact that in the past the privilege of deducting various fringe benefits has been abused by certain members of the business community. It is highly unlikely that small businesses have contributed more significantly to this abuse than others. While we agree that it was necessary to reform the Tax Code and eliminate these abuses, we feel the brunt of these reforms must be borne by the abusers of the system.

As you may have already discovered, the proposed recordkeeping requirements and indeed the entire package of regulations has drawn an overwhelmingly negative reaction. I, too, have received many of the letters you have received.

Company-supplied vehicles are one of the few fringe benefits which small businesses may be able to provide employees while benefiting the business itself. The stringent regulations on automobile use are perceived as another form of unnecessary Government intervention and a deterrent in a small businesses ability to compete for the best employees.

It is necessary you understand and recognize the differences inherent in small firms when these recordkeeping requirements are

established you need to take into account the time and money it will cost these small businesses to comply with your proposed rules. It is necessary to recognize these differences and allow for that flexibility.

Small businesses are now providing the largest number of new job openings throughout the country. They are cushioning the decline of many of our more traditional large industries, and are softening the impact that these declining firms are having on our unemployment levels.

Small businesses are, in many cases, creating the technologies which will provide future jobs.

In addition to making necessary income tax withholding upon the value of the personal use of the vehicle in question and employer has to pay the appropriate employer payroll tax on this assessment.

Another quote from the President's report on small business suggests that tax policies that sustain a cash-flow of small firms will continue to be a major goal of this administration.

This regulation serves to restrict the cash of businesses. A small business is often cash short and any unnecessary restriction on its cash could prove to be quite detrimental to its daily operations.

If the withholding requirement is, indeed, necessary it should be done on an annual rather than a quarterly basis. This would make the increase in paperwork less burdensome. Small businesses do not expect nor ask to be exempt from all annoying regulations. This we recognize as impossible.

We do not expect preferential treatment because of our size. We expect treatment which is proportional to our size.

In a letter I recently received from Congressman Bill Broomfield, he wrote: "These IRS regulations fly in the face of every effort to simplify our tax laws and ease the business paperwork burden."

I concur wholeheartedly with the Congressman's assessment of the situation. In reforming the Tax Code, special care must be taken not to further complicate an already incredibly complex system.

Once again, I would like to stress the need for maximum flexibility in these regulations as they apply to small businesses. If this flexibility is not written into the current legislation or into the current regulations, we would have to support House Resolution 531 and Senate Resolution 260 which call for a complete repeal of the IRS statutory authority to implement those vehicle regulations.

On behalf of Small Business United and its individual organizations, I want to thank you for this opportunity to testify before your committee today.

[The prepared statement follows:]

STATEMENT OF JOHN GALLES, EXECUTIVE DIRECTOR, SMALL BUSINESS ASSOCIATION OF MICHIGAN, ON BEHALF OF SMALL BUSINESS UNITED

Good Afternoon. My name is John Galles, I am Executive Director of the Small Business Association of Michigan, which represents 2,500 small firms throughout the state. Our association is a member of Small Business United, a national small business advocacy group which represents small business organizations in 35 states. I am speaking today on behalf of Small Business United and the small businesses which it serves.

First of all, I would like to point out that small businesses are more than willing to pay their fair share of taxes, whether it be for fringe benefits or for such items as unemployment and workers' compensation insurance. What concerns small business owners is that they often end up paying a relatively higher cost in proportion to payroll than do large firms for a variety of taxes and governmental regulations. We encourage you to allow small businesses a large degree of flexibility under these regulations, in order to ensure fair treatment of small firms throughout the nation.

In and of itself, the revised regulation requiring recordkeeping for vehicles used for business purposes may not appear to be overly burdensome, particularly in light of the simplifications announced January 25, 1985. Yet when viewed in the context of the already inappropriate quantity of paperwork that a small business must deal with, this regulation only adds to a small business person's workload. It is another example of small businesses being subjected regulations of the federal bureaucracy which are simply not necessary.

In the introduction of "the State of Small Business: A Report of the President," presented March 1984, President Reagan wrote:

"Regulation, when it is necessary is increasingly achieved with a maximum of flexibility and common sense and a minimum of extraneous costs and burdens."

The regulation under scrutiny here does not appear to fulfill these standards. In particular, "extraneous costs and burdens" are not minimized. The amount of time, energy, and cost associated with carrying out a federal regulation such as this is magnified in a small business. Often there is no recordkeeping, per se. The record-keeper is also the salesperson, the receptionist, or the owner him- or herself. A significant portion of time must be spent filling out paperwork in compliance with this Federal regulation. This is time that could and should be spent running the business.

At a time when there appears to be a grass-roots movement calling for a simplification of the tax code, this move seems highly inappropriate. For most small businesses, this requirement only makes the process of filing taxes that much more complex. It ends up making them less efficient, less productive, and less competitive.

I would also like to point out that there is a fine line between business and personal use of autos for many small businesses, especially family-run firms or sole proprietorships. Many small business people are almost never "off the job" because they combine meals with meetings and trips with business contacts.

Because small businesses are unique in size and character, I propose that the Treasury Department grant small businesses flexibility in complying with these recordkeeping regulations. I propose that such items as the 70-30 split offered to special categories of business owners, such as farmers and people in sales and service professions, be expanded to include all businesses which have fewer than 250 employees and have gross sales of less than 6 million per year. I would further like to suggest that the standard deduction is too low for many small business people and should be increased to at least an 80-20 split. On the other hand, there are those businesses which use business vehicles for personal reasons approximately 50 percent of the time. In light of these variations, you should allow the employer and employee the option of estimating the appropriate percentage of business mileage to deduct.

No one is disputing the fact that in the past the privilege of deducting various fringe benefits has been abused by certain members of the business community. It is highly unlikely that small businesses have contributed significantly to this abuse. While we agree that it is necessary to reform the tax code, and eliminate these abuses, we feel that the brunt of these reforms must be borne by the abusers of the system. As they are currently written, these regulations do more to inhibit profit making than they do to generate additional tax revenues.

The changes to the recordkeeping requirements announced on January 25 are appreciated by the small business community, but these are not enough. They ease the burden, yet do not solve the problem of unwarranted regulations. There are a large number of small business people who do not fall under the categories which allow a standard deduction. Many people engaged in the service professions, such as accountants and lawyers, frequently use their vehicles for business purposes throughout the day. Others, such as distributors or businesses which offer limited delivery services, frequently make trips to the same locations on a regular basis. These are just a few examples of the types of business owners who should not be required to keep a daily log.

As you may have already discovered, the proposed recordkeeping requirements, and indeed the entire package of regulations concerning business supplied automobiles, has drawn an overwhelmingly negative reaction from the small business community. Company-supplied vehicles are one of the few fringe benefits which small

businesses may be able to provide employees while benefitting the business itself. The stringent regulations on automobile use are perceived as another form of unnecessary government intervention and a deterrent in a small business' ability to compete for the best employees.

It is necessary that you understand and recognize the differences inherent in small firms when these recordkeeping requirements are established. You need to take into account the amount of time and money it will cost these small businesses to comply with your proposed rules. It is necessary that you recognize these differences and allow for flexibility because it is crucial to the nation's economy that small businesses survive and grow. Small businesses are now providing the largest number of new job openings throughout the country. They are cushioning the decline of many of our more traditional large industries and are softening the impact that these declining firms are having on our unemployment levels. Small businesses are, in many cases, crating the technologies which will provide future jobs and stimulate state and national economies. They should be granted some concessions and not be overly burdened by time-consuming recordkeeping requirements.

In addition to making the necessary income tax withholding upon the value of the personal use of the vehicle in question, an employer has to pay the appropriate employer payroll tax on this assessment. In the previously stated report, President Reagan also wrote:

"Tax policies that sustain the cash flow of small firms will continue to be a major goal of this administration."

This regulation serves to restrict the cash flow of a business. A small business is often cash short and any unnecessary restriction on its' cash could prove to be quite detrimental to daily operations. If the withholding requirement is indeed necessary, it should be done on an annual rather than quarterly basis. This would make the increase in paperwork less burdensome.

Because they are labor, and often, inventory intensive, small businesses pay payroll, income, and other taxes at extremely high effective rates. These effective rates are far in excess of the average for all business. Payroll taxes, in particular, have grown significantly, making it increasingly difficult for small firms to survive and grow. Between 1970 and 1990 there have already been, or are now scheduled to be implemented, nine FICA rate increases totaling 60 percent; 19 FICA base increases totaling an estimated 677 percent, three Federal Unemployment Compensation rate increases totaling 94 percent, and three Federal Unemployment Compensation base increases totaling 133 percent.

Small businesses do not expect, nor ask, to be exempt from all annoying regulations; this we recognize as impossible. We do not expect preferential treatment because of our size; we expect treatment which is proportional to our size. The size of a business is a very important and valid variable which must be taken into account when determining the applicability of a regulation to different businesses.

In a letter I recently received from Congressman William Broomfield, he wrote: "These IRS regulations fly in the face of every effort to simplify our tax laws and ease the business paperwork burden." I concur wholeheartedly with the Congressman's assessment of the situation. In reforming the tax code, special care must be taken not to further complicate an already incredibly complex system, especially where small business is concerned.

Once again, I would like to stress the need for maximum flexibility in these regulations as they apply to small businesses. If this flexibility is not written into the current legislation, we would have to support House Resolution 531 and Senate Resolution 260, which call for complete repeal of the IRS's statutory authority to implement the vehicle regulations.

On behalf of Small Business United and the individual organizations from 35 states, I want to thank you for your time and attention on this matter which is so important to small businesses across this country.

Mr. JONES. Thank you very much.

I am going to recess the hearing for a vote on the floor.

[Whereupon, a recess was taken.]

Mr. JONES. Our next witness is Mr. Liebenson for Mr. McCarthy.

**STATEMENT OF JAMES D. McCARTHY, JR., AS PRESENTED BY
HERBERT LIEBENSON, PRESIDENT, NATIONAL SMALL BUSI-
NESS ASSOCIATION, AND EXECUTIVE DIRECTOR, SMALL BUSI-
NESS LEGISLATIVE COUNCIL**

Mr. LIEBENSON. I am sorry that Mr. McCarthy was involved with a court case and just could not get here in time. I will ask that the statement be submitted for the record, and I will just highlight some of the points Mr. McCarthy wished to make.

My name is Herbert Liebenson, I am president of the National Small Business Association and executive director of the Small Business Legislative Council. Today I am appearing on behalf of the National Small Business Association [NSB] and its affiliated Small Business Legislative Council [SBLC]. NSB is a multi-industry trade association, representing approximately 50,000 small business firms nationwide. SBLC is a coalition of 88 national trade and professional associations, representing over 4 million small firms.

The regulations state that if employees take a business vehicle home, even though this is for the convenience of the employer, the employee will have to include \$3 in his income for the privilege of using the vehicle to commute.

Imagine this scenario: An employee of a towing company takes the tow truck home because he is on 24-hour call. Even though he may live a few blocks from the station, he will have an additional \$3 of income. Multiply this by 5 days a week, 52 weeks a year, and he will have an additional \$780 of taxable income per year. In addition, FICA taxes amounting to \$54.99 will have to be deducted from his regular pay to cover the withholding requirements. The employer will also have to pay an additional \$54.99 in FICA taxes.

No one is better off. Hearing this, the employee and employer may agree that the extra taxes are not worth it so the employee will not take the tow truck home.

Another concession in the revised regulations is that persons who spend most of the normal business day using a vehicle may forego the recordkeeping requirements and treat 70 percent of the use of the automobile as business use.

What is a normal business day? Does this mean that a person who has to be out on the road every day or 4 out of 5 days or half of every day? Is a business day 8 hours long or is it 7½ hours? What happens if a person begins the year with a sales job and is out on the road most of the normal business day, then in October gets a new desk job so that the normal business day is then spent behind a desk? Will this person be denied all deductions for the business use of this auto because he did not keep records for the first 9 months of the year?

There is another hidden catch in the regulations, that if the vehicle carries passengers, a log will have to be maintained. Thus a van equipped to haul tools and equipment that also transports workers to a worksite is covered, even though the vehicle is never used for any personal purpose. The mere fact that passengers are transported dictates that the driver will have to maintain a log on that vehicle.

Recommendations: We suggest that these onerous burdens can be mitigated. One, section 274(d) should be amended to delete the in-

clusion of other means of transportation. That would mean that all trucks weighing more than 6,000 pounds would not be covered.

Two, add a further amendment that logs need not be maintained for vehicles obviously used 100 percent for business purposes. The regulations make an attempt at this by naming such trucks as cement mixer, forklifts and so forth.

There are other types of trucks which also should be included. Tow trucks, vans, specially equipped for a single purpose, business use and others.

Three, make it clear that having a business vehicle which is parked at an owners' residence is not always *prima facie* evidence that the vehicle will be used for personal purposes. The recordkeeping requirements should be the same for all businesses whether conducted from a space outside the taxpayer's home or from a qualifying office in the home.

Under certain circumstances, allow the taxpayer a choice in the way logs can be kept. In many instances, recording the personal use of the vehicle rather than the business use can result in less recordkeeping.

This would be the case where a vehicle is used 90 percent for business and could be adequately substantiated by recording the 10-percent personal use.

Five, remove the blanket stigma of carrying passengers as a condition that requires recordkeeping and allow an exemption where the passengers are employees being driven to a jobsite or for other business purposes.

We have conclusions in the record, and I will stop at that point. [The prepared statement follows:]

STATEMENT OF JAMES D. MCCARTHY, JR., ON BEHALF OF NATIONAL SMALL BUSINESS ASSOCIATION [NSB] AND SMALL BUSINESS LEGISLATIVE COUNCIL [SBLC]

Mr. Chairman and members of the committee, my name is James McCarthy, I am Vice President of General Business Services, Inc. Today I am appearing on behalf of the National Small Business Association (NSB) and its affiliated Small Business Legislative Council (SBLC). NSB is a multi-industry trade association representing approximately 50,000 small business firms nationwide. SBLC is a coalition of 88 national trade and professional associations representing over 4,000,000 small firms.

General Business Services, Inc. was founded in 1962. Today there are more than 1,000 franchised business counselors nationwide. These counselors serve small businesses exclusively. Their clients range from one person part-time operations through larger corporation which may gross as much as \$1 million in sales annually. During its 23 years of existence, GBS has dealt with hundreds of thousands of small businesses. We have seen clients who began on a shoestring grow into a flourishing business establishment. We have also seen businesses give up because of the over-burdening paperwork and compliance measures of governmental agencies at the federal, state and local levels. GBS in its attempt to help these businesses has become aware of the myriad of problems they face. It is uniquely qualified to comment on issues affecting businesses, particularly small businesses.

Small business plays an extremely important role in today's economy. During the 1981 through 1982 period small businesses created 2.6 million jobs. At the same time, big businesses lost 1.6 million jobs. Because of small businesses important role, there was a net gain of one million new jobs in the U.S. A recent study has shown that over one-half of the innovations in the past 75 years have come from small businesses. Other surveys show that results of \$1.00 spent on research are 24 times greater in a small business than in a big business. All these factors indicate that the greatest productivity is in the small business sector. With results like this, how can we ignore the 17 million small businesses in our country. There is a tremendous need to encourage embryo businesses. By encouraging them, the labor force grows, new innovations occur, and advances are made in all facets of life.

RECORDKEEPING IS A BURDEN

The changing of a few words in Code Section 274(d) resulted in one of the most onerous recordkeeping burdens placed on many small businesses. "Adequate contemporaneous records" on the business use of vehicles may seem like an innocuous phrase and was certainly meant to more clearly define the replaced phrase "adequate records or . . . sufficient evidence corroborating" the travel expenses. However, the regulations issued by IRS as its interpretation of this new requirement are horrendous. Even the subsequent revised regulations are mind-boggling.

No one will deny that some abuses exist in claiming deductions for the business use of an automobile. Parenthetically I should add that even these stricter rules will not entirely end these abuses. However, by requiring "adequate contemporaneous records" for all business use of all vehicles and transportation equipment is analogous to ridding your living room of a pesky fly by using a pile driver.

EXAMPLES

The GBS national office has been flooded by inquiries as to how the new rules will apply to them. In most cases, our answer is to keep a log, even though the idea may seem ludicrous. For example, many small businesses are conducted out of the owner's home. If there is a vehicle used in the business it will be parked at the residence. The regulations state that when any vehicle is kept at the home of an owner, records must be maintained. One of our clients is in the window installation business and has a van specifically equipped for carrying replacement windows and as an on-site workshop. An employee, unrelated to the owner, is the only person who drives the van. Each morning he drives his own car to the owner's home/office, drives the van all day only on business, returns it in the evening, gets in his own auto and goes home. A log has to be maintained. Ridiculous!

The regulations also state that if an employee takes a business vehicle home, even though this is for the convenience of the employer, the employee will have to include \$3 in his income for the "privilege" of using the vehicle to commute. Imagine this scenario. An employee of a towing company takes a tow truck home because he is on 24-hour call. Even though he may live a few blocks from the station, he will have an additional \$3 of income. Multiply this by 5 days a week, 52 weeks a year, and he will have an additional \$780 of taxable income per year. In addition, FICA taxes amounting to \$54.99, will have to be deducted from his regular pay to cover the withholding requirements. The employer will also have to pay an additional \$54.99 in FICA taxes. No one is better off. Hearing this, the employee and employer may agree that the extra taxes aren't worth it, so the employee will not take the tow truck home. Would you like to be the one with a flat tire in the middle of a rainy night awaiting a tow truck while the employee drives to the station to pick up the truck before he can come to your rescue? You would be the one inconvenienced by the \$3 commuting income.

Another "concession" in the revised regulation is that persons who spends most of a normal business day using a vehicle may forego the record keeping requirements and treat 70% of the use of the automobile as business use. What is a normal business day? Does this mean that a person has to be out on the road every day, or 4 out of 5 days, or half of every day. Is a business day 8 hours long, or is it 7-and-a-half? What happens if a person begins the year with a sales job and is out on the road most of a normal business day, then in October gets a new job so that the normal business day is then spent behind a desk. Will this person be denied all deductions for the business use of his auto because he did not keep records for the first 9 months of the year?

There is another hidden catch in the regulations, that if the vehicle carries passengers a log will have to be maintained. Thus, a van equipped to haul tools and equipment that also transports workers to a work site is covered. Even though the vehicle is never used for any personal purpose, the mere fact that passengers are transported dictates that the driver will have to maintain a log on that vehicle.

RECOMMENDATIONS

We suggest that these onerous burdens can be mitigated.

1. Section 274(d) should be amended to delete the inclusion of other means of transportation. This would mean that all trucks weighing more than 6,000 pounds would not be covered.

2. Add a further amendment that logs need not be maintained for vehicles obviously used 100% for business purposes. The Regulations make an attempt at this by naming such trucks as cement mixers, fork lifts, etc. There are other types of trucks

which should also be included—tow trucks, vans specially equipped for single purpose business use, etc.

3. Make it clear that having a business vehicle which is parked at an owner's residence is not always prima facie evidence that the vehicle will be used for personal purposes. The record-keeping requirements should be the same for all businesses whether conducted from a space outside the taxpayer's home or from a qualifying office-in-home.

4. Under certain circumstances, allow the taxpayer a choice in the way logs can be kept. In many instances, recording the personal use of the vehicle, rather than the business use, can result in less record-keeping. This would be the case where a vehicle is used 90 percent for business and can be adequately substantiated by recording the 10 percent personal use.

5. Remove the blanket stigma of "carrying passengers" as a condition that requires record-keeping. allow an exemption where the passengers are employees being driven to a job site or for other business purposes.

CONCLUSION

No system can be perfected which will work in every conceivable situation. However, the current requirements for record-keeping are creating more havoc in the small business community than any other in recent memory. It is just possible that more than a few small business people may decide to give up their business rather than comply. There have been abuses in this area in the past. But by creating almost impossible standards the non-compliance could possibly become the norm rather than the exception.

Mr. JONES. Our next witness is Mr. John Motley of the National Federation of Independent Business.

STATEMENT OF JOHN J. MOTLEY III, DIRECTOR OF FEDERAL LEGISLATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. MOTLEY. Thank you, Mr. Chairman. I am John Motley, director of Federal legislation for the National Federation of Independent Business. On behalf of our 500,000 plus members across the country, I want to thank you and the committee for giving us the opportunity to testify today on the rules on contemporaneous auto logs.

I must say, Mr. Chairman, that in my 15 years with NFIB, representing small business in Washington, I do not think I have ever witnessed an angrier or more bitter outpouring of resentment from the small business community as when they began to find out about their requirements under the regs which Treasury published last year.

I might also add to that anger—that there was a good deal of confusion and disbelief that they would have to comply with these rules along with that anger. Now, we all know why the rules came about, what the committee was trying to accomplish, what Congress was trying to accomplish last year in trying to get at the abuses involved with luxury automobiles.

We very frankly at that time believed that the luxury car issue had been handled by capping the amount of ITC and by stretching out the amount of depreciation allowed on those types of automobiles or vehicles.

As a matter of fact, we have had absolutely no complaints from any NFIB member suggesting that this part of what Congress did was a problem for them. It is primarily focused on the paperwork requirements of the contemporaneous auto log issue.

IRS was not, it seems, satisfied that getting at the luxury car problem was sufficient and decided that they had to go out and insure that business people actually prove business use. This really should not be too surprising for many small business people because IRS has always been a problem in that respect.

Fully 65 percent of the entire paperwork burden of the small business community of this country excluding procurement paperwork is generated by IRS. In addition to that, according to the Office of Management and Budget, 6 of the top 10 most burdensome forms that small business and the American public have to answer today are generated by the Internal Revenue Service.

Therefore, it is no surprise to many of us who have been in the small business area for a number of years that we are being burdened with the contemporaneous auto log.

Now, OMB and the IRS have an obligation under the Paperwork Reduction Act and under the regulatory flexibility act to take a look at the burden of their regulations and paperwork upon smaller firms.

In taking a look at the statement that was submitted to OMB by IRS, you would only have to say that the paperwork burden on small business was grossly miscalculated to begin with and that OMB shirked its responsibilities under the law by approving the clearance of those regs a full two months before they were published in final form.

NFIB, on the other hand, conservatively estimates that these regs will cost the small businesses that have to comply approximately \$1,000 per year, and if again you conservatively estimate that 3 million out of the 6.5 or 7 million full-time businesses in this country would have to comply with the regs, the cost is roughly, in our estimation, \$3 billion, to collect \$150 million in new revenues.

It makes absolutely no sense to us to have these regulations when the revenue raised is approximately 20 times the cost of compliance to the taxpayers. I might add that our estimates are very conservative to some of the original estimates that were out. Some as high as \$7 billion a year.

The outcry that came from the small business community, of course, has caused IRS to attempt to amend their regulations. Let me deal with that very quickly in saying that we believe that the new regulations or the amendments to the regulations are confusing, burdensome and that they discriminate against smaller firms. These regulations are no answer to the problem out there, except for repeal of the regs.

Let me give you an example, if I can, of a small business owner who we believe would be covered by those regulations. Take a home improvement contractor who might live in the suburbs of Maryland and operate in the District of Columbia. He has 13 employees and five trucks on the road with two-man crews, and they are out doing individual jobs.

He drives a multipurpose vehicle. Let us say a Chevrolet Suburban. His requirements, as we see them, would be to start that log when he leaves his home in the morning and he might leave his home at around 7:30 and arrive at the office at about 5 minutes to 8. He leaves the office at 8:15, and arrives at a job to inspect work in progress around 8:30 up on Capitol Hill. Leaves Capitol Hill at

around 8:50 in the morning and arrive in the Cleveland Park area to inspect another job and so on up until let us say 11, giving out estimates, maybe even going back to the shop to pick up a part.

He would have six entries in that log by 11:00 in the morning and he has only checked two of his crews. Well, IRS estimates that it would take 3 minutes for each entry. That is approximately 18 minutes by 11; 1 hour approximately for the day; 5 hours for the week; 260 hours for the year, which is 6½ weeks of that contractor's time filling out auto logs which is, in our estimation, a tremendous waste of the taxpayers' money.

That is really only one of the problems, Mr. Chairman. Other witnesses have mentioned the amount of withholding that would have to be increased, the drain on the cash-flow of small businesses, the other problem of effective dates. Witnesses said up here that it might be April or May before we have regs which could be put into effect, and all this time small businesses are going to have to comply or worry about having to comply.

There are just tremendous problems, and again, our recommendation would be for repeal. I believe Commissioner Egger mentioned before and several other witnesses also have mentioned that the basis of our tax system is voluntary compliance. Well, we think that is terribly important because the Government simply does not have the resources to give everybody out there a personal IRS agent.

I would submit to the committee that raising \$150 million at the cost of \$3 billion in paperwork burdens on the small business community is exactly what happens when we forget that the system is based upon voluntary compliance.

Thank you, Mr. Chairman.

[The prepared statement follows:]

**STATEMENT OF JOHN MOTLEY III, DIRECTOR OF FEDERAL LEGISLATION, NATIONAL
FEDERATION OF INDEPENDENT BUSINESS**

My name is John Motley, I am the Director of Federal Legislation for the National Federation of Independent Business (NFIB). On behalf of NFIB's more than half million members I am pleased to be appearing before you today on the subject of IRS regulations on "recordkeeping requirements for business property", and specifically automobile logs.

The Tax Reform Act (TRA) of 1984 included a minor change to Section 274d of the Internal Revenue Code (IRC). The change in the law specifies a new standard for substantiation of business, entertainment, and travel expenses, and deductions for business use of an automobile or other vehicle. Prior to enactment of the 1984 Tax Reform Act, section 274d of the IRC specified that no deduction for travel or entertainment expenses would be allowed unless, "the taxpayer substantiates by adequate records or by sufficient evidence corroborating his statement" the specific details of the expenditure. The 1984 Tax Reform Act changed this standard by specifying that "no deduction or credit shall be allowed unless the taxpayer substantiates by adequate contemporaneous records" the specific details of the expenditure or use of the property.

With this small change made in the tax law, the Treasury and the IRS went to work and issued new regulations specifically defining the requirements for adequate contemporaneous records. IRS issued proposed and temporary regulations on October 24, 1984, outlining the requirements of the new law. The issuance of these regulations resulted in the most extensive unsolicited membership response that we have ever had. Small business owners apparently learned quickly from their accountants that they were going to be required to keep a amount of new paperwork and that these new regulations might cost a great deal, both in lost tax benefits and lost productivity.

Impressed by this negative reaction to the proposed regulations and by the hostile reception which they received from Members of the House and Senate, the IRS issued amendments to their original proposal on February 20, 1985. These amendments and the urgent need for remedial legislation to clarify this situation is the specific topic of today's hearings.

In the opinion of the membership of NFIB, the change in the law which occurred last year was ill-considered and unnecessary. Small business owners have no desire to protect abusers of our tax code; however, they are tired of the ever increasing burden of paperwork imposed by the IRS. Tax abuse by a small percentage of the population must not be used as an excuse to impose new paperwork burdens on the rest of the taxpaying population. The IRS has taken this approach in many cases in the past, with the result that paperwork generated for the IRS by small business far exceeds requirements by all other agencies. The government's own paperwork burden estimates reveal that, excluding procurement-related paperwork, the IRS accounts for approximately 65% of all government paperwork required from small businesses.

The recently-amended regulations do not resolve the unacceptable situation created by the original regulations, and NFIB encourages this committee to recommend legislation repealing section 179b of the 1984 TRA. In addition to repealing this tax rule, we encourage the committee to examine substantiation and record-keeping rules to determine how some certainty can be brought into this area of the tax law. We do not believe that this review can be accomplished within the context of the current investigation, but we urge you to act quickly. Extended periods of uncertainty only add to the confusion of small business owners and cause substantial compliance costs.

We have conservatively estimated that a minimum of 3 million businesses will be subject to the new log requirements and paperwork rules, resulting in a conservatively estimated cost increase to each business of \$1,000. This means an annual cost increase to the small business community alone of \$3 billion—all for a revenue provision worth only \$150 million. Others have estimated that the cost of complying with these new regulations may exceed \$7 billion.

NFIB members urge Congress to repeal the changes made by the 1984 Tax Reform Act that resulted in these regulations, and to restore the regulations that applied under the old law. We urge that this approach also be taken with the fringe benefit regulations that have been issued by the IRS and are intended to determine the imputed value of any benefit received from personal use of a vehicle. Since the proposed regs on both auto logs and fringe benefits are closely related, we urge that they be reviewed and repealed together.

AMENDED REGULATIONS—OUTSTANDING ISSUES

The amendments to the regulations attempt to deal with the most egregious situations created by the original proposal, but in general fail to accomplish any easing of the recordkeeping burdens for most small businesses which remain subject to these rules. The amended regulations specify that a log will not have to be maintained for use of a vehicle if the use of the vehicle falls under several specific exceptions. However, the exceptions themselves result in substantial additional complexity and uncertainty for taxpayers. Instead of resolving the questions of who must maintain a log and when, the issue has become more confused than ever.

ADEQUATE CONTEMPORANEOUS RECORDS

The amended regulations say that the detail of business use of a vehicle may be provided on a form other than a log, journal or diary. It specifies that other forms such as trip sheet cards or time and expense reports can be used. The only effect of this change is to provide additional ways in which the reams of information can be collected. In addition, a trip sheet or expense report may not have all of the information which the regulations still specify as necessary, resulting in even more paperwork to meet the requirements. These requirements include the date of property use, the name of the property user, the number of miles traveled or the amount of time the property was used, and the purpose of its use.

SAFE HARBORS

The amended regulations specify that under certain circumstances a log may not be necessary. These circumstances are:

If a road vehicle is never used for any personal purposes (save de minimis exception's);

If a road vehicle is not used for personal purposes other than commuting and the commuting use is deemed for the employers benefit;

If a road vehicle is used by different employees for business purposes only, an allocation of business and personal use can be made on an 80/20 basis in lieu of maintaining a log; or

If a taxpayer receives more than 70 percent of gross income from farming, then a log will not be required if an 80/20 business personal use allocation is made.

In addition to any of these specific safe harbors, the taxpayer may choose to keep a contemporaneous log of all personal use only to determine the allocation of business and personal auto use.

These are the changes which are supposed to clarify the regulations for small business. These half-hearted changes only serve to make matters worse, because they require choices and interject substantial new uncertainty. In most circumstances small business owners will receive no relief from the original rules at all, and still must face many confusing tax problems.

The first problem is the definition of a "road vehicle." The amended regulations are confusing as to whether this definition includes an automobile. Clearly many businesses use an automobile or automobile type vehicle (such as a station wagon) for business purposes. Excluding the use of automobiles in any of the safe harbors is clearly inequitable. Such a rule would require a contemporaneous log for all automobile type vehicles.

In addition, none of the safe harbors in the new regs. can be used by anyone who owns 1% or more of a business. This means that the new rule provides almost no relief to the vast majority of small business owners. Most are either active salesmen or in a position that requires the use of a vehicle to visit a job site to keep track of employee progress.

The 1% rule also discriminates against a small business that may have allowed a valuable employee to purchase a small amount of equity in the company as an incentive. Large corporations often provide the same type of benefit. However, 1% of AT&T or IBM is very different than 1% of XYZ Construction Co. Key employees at either of the large firms would have to earn millions of dollars in stock before they owned even an infinitesimal portion of these firms. This rule is a double standard for large and small firms in similar circumstances. A minority, or even a majority, ownership in a small business should not be a basis for imposing these horrendous new paperwork rules.

Even if a small business owner chose to use one of the safe harbors provided in the rules, his concerns are not over. The regulations state that the IRS reserves the right to determine whether the business actually qualifies for the safe harbor. This means that if a business used a safe harbor, then IRS could (within its three year audit period) come back and determine that the business did not qualify and insist that since no adequate contemporaneous logs were kept that all of the deductions be disqualified. What kind of certainty is this?

The safe harbor percentages themselves are inequitable. A business may be forced to choose one of the safe harbors to be sure of its status, when under prior rules it could have illustrated greater business use. The requirement to maintain a log is such a major deterrent, because of the inherent costs involved, that it is virtual blackmail to provide a safe harbor which is far less beneficial to the business than the treatment that would have been available otherwise.

The idea of requiring detailed reporting for personal use of a vehicle only is interesting but probably impractical. It is simply unrealistic to expect an employee to detail any personal use that would admit that he or she was not performing their duties. This is different than requiring an allocation for personal use outside of business hours, the latter does not require the extensive detail which IRS has requested.

These issues remain outstanding and they are the basis for the great amount of confusion that surrounds the regulations. Other remaining unresolved issues include the following:

The IRS is still not clear on whether a van or truck must be subject to the luxury car rules. Nor has it clearly defined the type of vehicle which may be used in the safe harbors.

The regulations are effective retroactive to January 1, 1985. It may yet be several months before they are finalized (if they can be) and many small firms who do not understand their obligations may be placed in jeopardy because they have not maintained to date the records these regulations will require.

Commuting issues remain a concern for many businesses because they are not sure about the type of vehicles the rules will cover and whether minority owners and owner employees will qualify for exclusions.

The cost of compliance in paperwork burdens and reporting requirements alone will run several billions of dollars. The Joint Tax Committee in its analysis of these provisions indicated that the revenue pickup in 1985 would only be \$150 million. We submit that this kind of benefit, in relation to the cost imposed (in the absence of any testimony or evidence that a major compliance problem exists), is absurd.

Of major concern are the automatic penalties which are provided by the law and the requirement that a taxpayer must sign a statement for a tax return preparer stating that the taxpayer has accurately complied with the recordkeeping rules. How can a taxpayer be expected to sign anything stating that he has complied with complex and variable rules that haven't even been finalized?

Our tax system relies very heavily on voluntary taxpayer compliance. Regulations like these are a major reason for the increase in taxpayer noncompliance and tax avoidance. When the system becomes this complicated, taxpayers are inclined to simply ignore it.

The IRS constantly complains about taxpayer noncompliance, but it is guilty of ignoring its responsibility to determine the impact of new regulations on small business, as mandated by the Regulatory Flexibility Act and Executive Order 12991. It is clear to us that had the IRS taken even a minimal amount of time to examine these proposed regulations, it would have realized the extraordinary paperwork burden it was placing on the small business community.

The Office of Management and Budget can also be faulted. Under section 3504(h) of the Paperwork Reduction Act it is required to perform a paperwork burden analysis and to determine whether a proposed regulation is going to result in a disproportionate increase in paperwork for small business. According to supporting documentation, OMB signed off on the auto log regulations on August 28, 1984, a full two months before the regulations were finalized and released. It is quite clear that OMB gave the IRS a "blank check" and ignored its responsibility to review paperwork burdens as mandated by Congress.

In addition to the issues we have raised about the proposed regulations, there are several related issues which deal with the fringe benefit regulations. The latter concern us because they could cause serious alterations in the employer-employee relationship. We would encourage this committee to look very carefully at the fringe benefit rules proposed. We believe that they should be reviewed concurrently with the auto log regulations.

CONCLUSION

We are grateful to Chairman Rostenkowski for scheduling these hearings, and we encourage the members of the committee to report legislation that will repeal section 179b of the 1984 TRA.

Mr. JONES. Thank you very much. I want to welcome back to the committee, Mr. Alexander.

Welcome, Don.

STATEMENT OF DONALD C. ALEXANDER, CHAIRMAN, TAXATION COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES, ALSO ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS

Mr. ALEXANDER. I detected, Mr. Chairman, the spirit of kindness now that I did not always receive in my prior capacity.

Mr. Chairman, I am here this afternoon on behalf of the U.S. Chamber of Commerce, the National Association of Manufacturers and the National Association of Wholesaler-Distributors. The latter two organizations had both requested time to testify but unfortunately that was not possible. All three organizations favor repeal.

Mr. Chairman, we favor repeal because we share in the views you just heard from the NFIB and the views that you heard from numerous witnesses this morning. The contemporaneous record-keeping requirement is one that I think the Treasury will not be

able to resolve through regulations. They tried. They produced a first set of regulations. They were much too burdensome.

I could have told them so, told them what happened in 1962 when section 274 was enacted and a former commissioner went too far and pulled back. Here they attempted to pull back and they attempted to solve some of the problems by creating safe harbors and creating exceptions and putting in a de minimis rule, but it did not work very well.

On pages 2 and 3 of the Chamber's statement, you see a mystifying definition of automobile, passenger automobile and road vehicle. We are sure that a motorized unicycle would be a road vehicle and not perhaps an automobile but it might on the other hand be a passenger automobile, because a passenger automobile seems to be different from an automobile.

The effort to cope in the second set of regulations has not solved the problems of small business as you just heard from the NFIB, and it has not, as we see it, met adequately the problems of the farmer, the problems that were brought out so clearly in the case of the law enforcement officer that must drive his or her vehicle home.

I do not believe, having been in IRS once, that the sky will fall and compliance will drop tremendously if Congress steps up to this problem and removes what was enacted last year—the change in 274(d) calling for adequate contemporaneous records—and goes back to a recordkeeping requirement that has served us pretty well over the years and that IRS can satisfactorily police if it sets about to do it and if it is given the resources to do it.

Now, while not every taxpayer should have his or her own personal Internal Revenue agent, surely the present audit coverage of 1.3 percent of the taxpaying population is insufficient. It needs to be increased.

But the audit burden, the problem of making our tax law work, should not be placed upon taxpayers through the imposition of very heavy paperwork burdens.

Sure, IRS can transfer part of its obligation to enforce the laws to the taxpayer by making it practically impossible for the taxpayer to claim a deduction or credit to which the taxpayer is entitled by requiring such a mass of paperwork and imposing the paperwork burden in such a way as to make it impossible for the taxpayer to meet that particular burden, and therefore, impossible for the taxpayer to obtain that relief.

That should not be done. It need not be done. We favor repeal. [The prepared statement follows:]

STATEMENT OF DONALD C. ALEXANDER, CHAIRMAN, TAXATION COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES, ALSO ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS

My name is Donald C. Alexander, and I am appearing today on behalf of the Chamber of Commerce of the United States. The Chamber is the largest federation of business and professional organizations in the world. I serve on the Chamber's Board of Directors, chair the Taxation Committee of the Chamber, and am a member of the Chamber's Employee Benefits Committee.

The recently enacted contemporaneous recordkeeping requirement for mixed-use property is a heavy burden on business and their employees. We thank this Committee for addressing this issue.

SUMMARY

Although Treasury has generally made a commendable attempt to provide workable rules for implementing the recently-enacted contemporaneous recordkeeping requirement, the onerous nature of the new statutory requirement makes it very difficult for Treasury to promulgate regulations that are not overly-burdensome to businesses. Each day, members of the Chamber call for relief from this contemporaneous recordkeeping requirement.

COMPLEXITY

Treasury's recent attempt to temper the hardships of its first effort to produce regulations applying the recordkeeping requirement has produced an extremely complex set of rules. The rules are currently contained in three sets of publications, no one of which contains a complete statement. Accordingly, the rules must be extracted by parsing the language of each publication and superimposing the later over the earlier. The difficulty of understanding the regulations, let alone applying them, cannot be overstated. Expecting thousands of small businesses to comply with these rules while expert tax lawyers and accountants are struggling to extract their meaning is unreasonable.

This problem is illustrated by comparing two key provisions—both attempting to tell the public what the requirements apply to:

Section 1.61-2T:

Q-11: For purposes of this section, what do the terms "automobile" and "road vehicle" mean?

A-11: The term "automobile" means any motorized four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "road vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways.

Section 1.274-6T:

(g) *Definitions.* For purposes of this section—

(i) "*Road Vehicle.*" The term "road vehicle" means any vehicle manufactured primarily for use on public streets, roads, and highways that is "listed property" (as defined in section 280F(d)(4) and § 1.280F-6T(b)) and is—

(i) Designed primarily for commercial use other than a "passenger automobile" (as defined in section 280F(d)(5) and § 1.280F-6T(c)), or

(ii) A vehicle not described in paragraph (g)(1)(i) of this section, e.g., a truck or van specially equipped or modified for personal purposes.

Solely for purposes of this section, a "passenger automobile" does not include a truck or van.

We are confused.

PROBLEMS WITH SAFE HARBOR PROVISIONS

In response to the public demand for relief from the harsh contemporaneous recordkeeping requirement as applied in Treasury's first interpretative effort, on February 20 Treasury published new regulations that provided some help, and Treasury is to be commended for this action.¹ Employees who spend most of a normal business day using a vehicle to visit job sites may keep no records and treat 70 percent of its use as business and 30 percent as personal if the vehicle is an automobile or 80 percent as business and 20 percent as personal if the vehicle is not an automobile. While a step in the right direction, this exception does not benefit many people in sales or service because their business use often exceeds 90 percent. In such a case, one must face the choice between treating business use as personal or requiring the time-wasting generating of onerous records. A further problem relates to the definition of sales and service. Most small business people must spend as much time in their office or store as out of the office or store to see customers or make deliveries. Since such persons are not primarily out of the office, they will be unable to qualify for this exception.

Similar problems arise under the newly created exception for farmers. To qualify, 70 percent of a person's income (excluding passive income) must come from farming. This 70 percent requirement is difficult to satisfy when many farmers are forced to take other jobs to make ends meet and many have spouses who must work outside of farming. In addition, unexpected events at the end of a year may well determine whether income from farming is 70 percent of a person's total income. If he barely

¹ Unlike their predecessors, the revised regulations generally ignore de minimis use.

misses qualifying for this exception, he will find that it is too late to maintain the records. A valid deduction would be lost.

Like the first set, the new regulations provide a special rule for employer-provided vehicles the personal use of which is limited to commuting. A troublesome—and unnecessary “pool” requirement in the initial regulations has been deleted. In addition, the new regulations reduce the commuting value from \$4 per day to \$3 per day. So far, so good. However, Treasury inexplicably tightened the exception to exclude employees who own as little as one percent of the business.² Although it is difficult to own one percent of a major publicly-held company, it is very easy to own one percent of a small private company; also, a one-percent owner does not exercise control, if this were Treasury’s concern.

The regulations provide that the value for the availability of an employer-provided vehicle is generally determined by reference to the cost to the employee of renting or leasing a comparable vehicle on comparable terms for a comparable period. Under his rule, a large commercial vehicle has a much higher value than an automobile, even though the personal use of an automobile is much more valuable to an employee than the personal use of the commercial vehicle. If an employee having limited personal use of a commercial vehicle is ineligible for the \$3 per day commuting rule, such personal use will result in a heavy tax burden. As a result, it is reasonable to expect that employees will refuse to drive commercial vehicles home, even though protection of the vehicle and furtherance of the business so require.

The withholding requirements of the imputed income provisions of the regulations present a serious administrative burden for businesses. The regulations should provide a reasonable quarterly, rather than annual, threshold that must be met before taxes are required to be withheld and deposited for noncash fringe benefits.

CONCLUSION

The members of the Chamber find the current situation unacceptable. The confusion and uncertainty generated by the law and the efforts to apply it have seriously impacted business, and small business in particular. Throughout the country, employers and employees are deeply concerned about the requirement for so much more paperwork and the puzzling and limited exceptions to the burdensome rules.

The Chamber believes that nothing short of repeal of the contemporaneous recordkeeping requirement will provide the relief that the business community must have.

Mr. JONES. Thank you very much, Mr. Alexander.

Ms. Hengesteg.

STATEMENT OF TONI L. HENGESTEG, DIRECTOR OF CORPORATE TAXES, ECONOMICS LABORATORY, INC.

Ms. HENGESTEG. Thank you very much, Mr. Jones, for giving the Economics Laboratory sales force the opportunity to address your committee and in lieu of your impending vote I will condense my remarks. I am appearing today on behalf of our sales force of 2,129 persons who drive 1,666 passenger vehicles and 463 vans and half-ton pickup trucks.

I feel very honored to sit here with the small business fellows that have preceded me in their remarks because I like to say that this issue is not, from my perspective, a big company versus little company issue. It is an issue for the man and woman in the street. That is upon whom these record burdens fall. I think we are all united in our perception.

I would like to tell you about our sales force that sells and services our soaps and detergents. They are on-call around the clock. Their office is in their home. They have a warehouse which is their garage. They incur no commuting mileage.

² Initially Treasury had excluded five-percent owners. Although this five-percent test was not statutory, it was consistent with a five-percent test for a similar purpose in the luxury automobile statutory provisions.

We are somewhat uncomfortable with the modified regulations in that we get no relief. The current safe harbor is just too high and too costly for our sales force.

Our sales force territory managers work in a given geographic area. They are middle class Americans who earn \$20,000 to \$40,000 a year. They are on call around the clock to service equipment in hospitals, restaurants, hotels and the like. A malfunctioning dish machine or hospital laundry must be immediately serviced. A hospital kitchen or operating room does not close. Public health must be protected.

The safe harbor rule is insufficient. Based on the typical \$10,000 car used by the sales force, the additional compensation to each territory manager or salesperson who uses the safe harbor rule, to be free of recordkeeping, is \$620 of additional taxable income. This is because our personal use is 10 percent at maximum. In many cases, we believe that they incur no personal use at all.

It is the position of Economics Laboratory that the IRS 70/30 rule is too high a ransom for freedom from recordkeeping, especially where there is no commuting, where the home and the office are one.

On behalf of our sales and service employees, Economics Laboratory respectfully requests the committee to consider a rule founded in common sense, geared to productivity and resulting in equity among other wage earners and to delete the contemporaneous recordkeeping requirement.

Again, to summarize our facts, our sales and service personnel work out of their home, remain on call and use their vehicle less than 10 percent for personal purposes.

Thank you.

[The prepared statement follows:]

STATEMENT OF TONI L. HENGESTEG, DIRECTOR OF CORPORATE TAXES, ECONOMICS LABORATORY, INC.

SUMMARY

The Economics Laboratory sales force of 2,129 cannot accept the record-keeping requirement. They request an exemption from recordkeeping for sales and service personnel like themselves who:

- (1) Work out of their home on a full-time basis;
- (2) Remain on call; and
- (3) Use the vehicle for personal purposes less than ten percent.

STATEMENT

Thank you, Mr. Chairman, for giving the Economics Laboratory sales force the opportunity to address your Committee.

I would especially like to thank Representative Frenzel for assisting us. My name is Toni Hengesteg, and I am the Director of Corporate Taxes of Economics Laboratory, Inc., headquartered in St. Paul, Minnesota with operations in all 50 states and in 50 foreign countries. I am appearing today on behalf of our sales force of 2,129 who drive 1,666 passenger vehicles and 463 vans and half-ton pickup trucks.

Economics Laboratory is a Fortune 500 specialty chemical company that manufactures and sells detergents and cleaning systems to hotels, hospitals, restaurants, dairies, and food processing plants. Economics Laboratory, for example, services the Longworth cafeteria and many of your other favorite restaurants in Washington, D.C. The consumer segment of Economics Laboratory may be more familiar to you. It manufactures and markets dishwashing detergent under the labels of Finish, Electrasol and sells Jetdry and Free & Soft. Economics Laboratory also operates a commercial pest control service in the Midwest through its Lystads subsidiary.

Economics Laboratory prides itself on providing excellent service to its clients on a twenty-four hour basis. We rely on our substantial network of sales people to always remain on call in their homes to service our customers.

The sales and service force of Economics Laboratory cannot accept the IRS record-keeping requirement. It is a tremendous imposition which lowers their productivity and morale. They respectfully request the Committee to exempt sales and service personnel like themselves who: (1) work out of their homes; (2) remain on call; and (3) use their vehicles less than 10% for personal purposes.

The majority of our sales and service force consists of territory managers who work a given geographical area. They are middle class Americans who earn \$20,000 to \$40,000 a year and who bear the brunt of America's tax burden. Why further burden the load of the citizen on the street? They are not provided office facilities or warehouse space. Their home is their office. Our sales force remains on all around-the-clock to service our equipment in hospitals, restaurants, hotels and the like. A malfunctioning dishwashing machine or hospital laundry must be immediately serviced. A hospital kitchen or operating room does not close. The public health must be protected twenty-four hours a day.

The modified regulations do not provide relief. The safe harbor is too high and therefore too costly to them. The new rule relieves sales and service personnel from record-keeping if business use equals or exceeds seventy percent (70%) of total use. The remaining thirty percent (30%) of the automobile lease value is treated as taxable compensation.

To our sales and service force, the office and home are one and the same. As a result, the sales force does not incur any commuting mileage. There is no personal use, or if personal use does take place, it cannot reasonably exceed 10%.

This new safe harbor, the 70/30 rule, for sales and service personnel does not provide a meaningful economic choice. The price of record-keeping freedom is too high given the limited personal use.

The following table illustrates the problem. Our autos have a fair market value of about \$10,000. The IRS annual lease value for a \$10,000 auto is \$3,100. The sales force personal use of a \$10,000 auto is 10% of \$3,100 or \$310. Under the 70/30 safe harbor rule, the Treasury would charge each driver 30% of the annual lease value (i.e., 30% \times \$3,100 = \$930) for relief from record-keeping. The difference between the 10% actual use and 30% safe harbor is the difference between \$930 and \$310 or an additional \$620 of taxable compensation. This is too high a price for the freedom of not keeping records.

Fair market value of sales/service automobiles.....	\$10,000
Annual lease value from regulations.....	\$3,100
Maximum personal use percentage for Economics Laboratory sales force.....	$\times 10$
Value of personal use (annual lease value \times personal use or \$3,100 \times 10%).....	310
Taxable compensation for personal use where record not kept under a 70/30 safe harbor rule (annual lease value \times personal use or \$3,100 \times 30%).....	930
Additional taxable income for freedom from record-keeping requirement (\$930 - \$310).....	620

The modified auto regulations do permit our sales force to record personal use rather than logging business miles. We commend the Treasury for that position. Yet, the Economics Laboratory sales force maintains that record-keeping should not be required for sales and service personnel who work out of their home on a full-time basis, who remain on call, and who have very limited personal use.

RECOMMENDATION

It is the position of Economics Laboratory that the IRS 70/30 rule is too high a ransom for freedom from record-keeping especially where there is no commuting, where the home and office are one.

On behalf of our sales and service employees, Economics Laboratory respectfully requests the Committee to consider a rule founded in common sense; geared to productivity; and resulting in equity among other wage earners and delete the contemporaneous record-keeping requirement.

Thank you, Mr. Chairman, for your attention to our concerns.

Mr. JONES. Thank you very much. All of you are essentially saying the same thing, and I agree with the essence of your statement.

Do you have any economists at Economics Laboratory? I am intrigued by the name.

Ms. HENGESTEG. Economics Laboratory is a Fortune 500 specialty chemical company. We sell detergents, cleaning systems to hotels, hospitals and restaurants, and our name was selected several years ago because our soaps were very cost effective, hence they are economical. We provide the leading edge in technology and hence the word laboratories. Our name has been a cumbersome name that we have suffered with ever since.

Mr. JONES. I think suffered was probably the right word to use there.

Ms. HENGESTEG. You are probably familiar with our consumer products, Finish, Electrasol, Jetdry, and Free and Soft.

Mr. JONES. Very good. I was curious about the name.

Does any member of the panel want to challenge or embellish on what has been said by other members. [Pause.]

Mr. Rangel.

Mr. RANGEL. I wanted to thank the panel on behalf of the chairman and the full committee and certainly to Mr. Alexander and others who constantly make a contribution to our deliberations that impact on the economy and so many millions of Americans, and needless to say before we make final decisions we will feel free to call upon you to either embellish your testimony you have given or if members want clarification of points that you have made.

Mr. JONES. Thank you very much. We will recess until we are through with this vote.

The next panel can go ahead and position yourselves. This would be the National Cattlemen's Association, the American Farm Bureau, and the American Association of Nurserymen.

[Whereupon, a short recess was taken.]

Mr. RANGEL [presiding]. We will resume. Chairman Jones had pointed out that this panel will consist of the National Cattlemen's Association, the American Farm Bureau and the American Association of Nurserymen.

I assume that the panelists have been advised that their full statements will appear in the record and they could testify as they feel most comfortable, and first of all let me welcome the three of you that are here and thank you on behalf of the committee and the Congress for your patience.

Mr. Ross.

STATEMENT OF JOHN W. ROSS, DIRECTOR, TAX, FINANCE, AND FARM POLICY, NATIONAL CATTLEMEN'S ASSOCIATION, ALSO ON BEHALF OF NATIONAL ASSOCIATION OF WHEAT GROWERS; AMERICAN SOYBEAN ASSOCIATION; NATIONAL ASSOCIATION OF CORN GROWERS; NATIONAL MILK PRODUCERS FEDERATION; AMERICAN HORSE COUNCIL; NATIONAL PORK PRODUCERS COUNCIL; AND NATIONAL COTTON COUNCIL

Mr. Ross. Thank you. First, let me thank you and thank the committee for this opportunity to comment on the contemporaneous records or auto logs issue. I am here on behalf of the members of eight agricultural organizations to register our objections to the regulations requiring adequate contemporaneous records to substantial business deductions for use of certain property particularly vehicles.

In the past few months, we received many telephone calls and letters expressing the frustration that farmers and ranchers have over the new regulations. One common theme that underlies all of these letters and telephone calls is that they are tired of the ever increasing burdensome demands placed upon them for more information, more data, and certainly more paper.

We do recognize and appreciate the efforts of the Treasury Department to revise the regulations and alleviate some of the burden. However, as is often the case when exceptions are carved out of an already cumbersome regulation, the result is an even more complex set of rules for farmers and ranchers to wade through in order to honestly comply with the law.

Our first concern is the increasing complexity that the revisions impose upon us. Our second concern is that even after the revisions were made, there is still a basic inequity in the way those revisions apply to us.

For example, on the 80/20- and 70/30-percent split on business use, on our ranch we may use the truck 95 percent of the time for business use and we may use a car 60 percent of the time for business use.

It just seems inequitable to us that we are going to have to keep records on that truck in order to justify the 95 percent, whereas on the car we can declare 70 percent and get, in effect, a 10 percent gift.

We do not want the gift. We want an appropriate requirement to substantiate the deductions and we felt that the language requiring adequate substantiation of deductions was sufficient.

A third concern that we have is the additional accounting for employee use of vehicles that is required under these regulations. As we interpret the regulations, we must still reflect income to an employee for commuting use of a vehicle even if the employee lives on a farm.

Let me use another example, again, based on my family ranching operation in Montana. Our hired man lives on a neighboring ranch, a contiguous ranch. Each day he gets out and gets in the pickup and drives over to the home ranch in order to start the day.

Now, as we interpret these regulations, we are going to have to either reflect an additional \$3 a day income for him and withhold on that, withhold Social Security and taxes on that or we are going to have to require him to use his own vehicle to drive that 2 miles over to the home ranch in order to start the day.

Now, he does not do that everyday either. So are we only to reflect commuting income on those days when he does commute?

Finally, we have to object to the process followed in establishing these regulations. The Treasury Department often write temporary regulations covering critical issues which have the force of law when published. They write these regulations knowing that the regulations are likely to be modified after public comment.

This imposes a tremendous uncertainty on business operators like the agricultural producers I speak for requiring them to comply with unreasonable regulations while working for revisions.

We suggest that such regulations become effective only after they are final and then for the following tax year.

We are supportive of legislation turning to the adequate record-keeping requirement of previous law. We support congressional efforts to move in the direction of tax reform based on fairness, simplicity, and economic growth.

However, we find it ironic that these regulations move away from simplification and instead promote paper chase rather than economic growth.

Thank you.

[The prepared statement follows:]

STATEMENT OF JOHN W. ROSS, DIRECTOR, TAX, FINANCE AND FARM POLICY, NATIONAL CATTLEMEN'S ASSOCIATION, ALSO ON BEHALF OF NATIONAL ASSOCIATION OF WHEAT GROWERS; AMERICAN SOYBEAN ASSOCIATION; NATIONAL ASSOCIATION OF CORN GROWERS; NATIONAL MILK PRODUCERS FEDERATION; AMERICAN HORSE COUNCIL; NATIONAL PORK PRODUCERS COUNCIL; AND NATIONAL COTTON COUNCIL

First, let me thank you, Mr. Chairman, and the members of the Ways and Means Committee for this opportunity to comment on the contemporaneous records or "auto logs" issue. I am here on behalf of the members of eight agricultural organizations to register their objections to the regulations requiring "adequate contemporaneous records" to substantiate business deductions for use of certain property, particularly vehicles.

In the past few months, we have received many telephone calls and letters expressing the frustration that farmers and ranchers have over the new regulations. A common theme is that they are tired of the ever-increasing burdensome demands placed upon them for more information, more data, and certainly more paper.

We recognize and appreciate the efforts of the Treasury Department to revise the regulations and alleviate some of the burden. However, as is often the case when exceptions are carved out of an already cumbersome regulation, the result is an even more complex set of rules for farmers and ranchers to wade through in order to comply.

Apart from increasing the complexity of the law, the revisions also contain a basic inequity. Arbitrarily establishing an 80-percent business—20-percent personal split requires those who use their vehicles strictly for business to keep records, while those who use the vehicles less than 80 percent of the time for business effectively receive a "gift." Furthermore, many producers may just accept the 80-percent deduction, foregoing a legitimate higher deduction, out of frustration over keeping the detailed records of personal use still required. This is hardly equitable and certainly not acceptable to the agricultural producers I represent today.

A third concern is the additional accounting for employee use of vehicles that is required under these regulations. As we interpret the rules, we must still reflect income to an employee for "commuting" use of a vehicle, even if the employee lives on the farm and uses the vehicle only for farm business. This is unreasonable, but only indicative of the complexity of the revised regulations.

Finally, we must object to the process followed in establishing these regulations. The Treasury Department often writes temporary regulations covering critical issues and gives them force of law when published, knowing that the regulations are likely to be modified after public comment. This imposes a tremendous uncertainty on business operators like the agricultural producers I speak for, requiring them to comply with unreasonable regulations while working for revisions. We suggest that such regulations become effective only after they are final, and then for the following tax year, unless there is an overwhelming urgency for immediate imposition as directed by Congress.

We are supportive of legislation returning to the "adequate records" requirement of previous law, dropping the requirement that such records be "contemporaneous." The additional cost of meeting the requirements imposed by the word contemporaneous are substantial, particularly when any exceptions increase the complexity of the rules. While the prior law required that records be kept, the burden of keeping records sufficient to justify deductions was not nearly as great as under these regulations.

Again, we need not remind you of the strong grass-roots opposition to "contemporaneous" logs. Business operators, including farmers and ranchers, view this as an unreasonable interference in business activity and a paperwork burden imposed.

We support congressional efforts to move in the direction of tax reform based on fairness, simplicity and economic growth. It is ironic that these regulations move away from simplification and promote paperchase rather than economic growth.

Thank you for this opportunity to testify.

**STATEMENT OF GRACE ELLEN RICE, ASSISTANT DIRECTOR,
NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION**

Ms. RICE. Thank you, Mr. Chairman.

The Farm Bureau is the Nation's largest agricultural organization with over 3 million members throughout the country, and I have got to say that I think we probably feel like we have heard from about 1 million of those members in the past 3 months, ever since the original regulations were published in October. We cannot really say that the modifications in February went a long way toward alleviating the problems that they have caused for our members.

Therefore, we are supporting a return to pre-1984 law to a standard of adequate rather than contemporaneous recordkeeping.

In January our voting delegates did adopt a position of opposition to the mileage log requirements of the new tax law. While we recognize that the intent of the particular portion of the Deficit Reduction Act may be appropriate to prevent abuse of the investment credit and accelerated depreciation, we believe that the recordkeeping requirements, as adopted by the Congress and proposed to be implemented by the Internal Revenue Service, are inappropriate.

The committee has specifically asked for examples of continuing burdens placed upon us by even the modified regulations, and I would like to point out one primary area where we still have some concern about the regulations.

Given the fluctuation of gross farm receipts due in part to sporadic markets or bad weather, it is possible that a farmer who might qualify for one of the two alternatives under the 70-percent gross income test and the 80/20 or 70/30 percentage allocation might be disqualified in a succeeding year.

This is true particularly when a spouse earns off-farm income. For instance, assume a situation in which the farmer has gross receipts of \$70,000 and the spouse has earned income of \$30,000 for a total of \$100,000 gross income.

If gross farm receipts drop even to \$60,000 the following year, the percentage of the farmer's gross income falls to 67 percent and the status of the recordkeeping requirement is thrown into confusion.

What happens? Must the farmer, if he plans to receive the benefit of the investment credit or ACRS revert to contemporaneous recordkeeping with all the attendant problems that have already been adequately presented to the committee? Must the recordkeeping method change because arbitrary percentage requirements have not been met although the type and extent of use have not changed at all?

In addition, as has been pointed out earlier, a farmer who claims business/personal mix of 90-10 and chooses to record personal use only, can expect the IRS to challenge vigorously the personal use records.

Farm employees who drive vehicles home can expect to have the commuting value of the vehicle imputed to them as a taxable

fringe benefit for which the employer then has to become liable for income tax withholding. This only adds to the recordkeeping burdens of the farming operation.

That would be our major concern in the area of farming, and I feel that I must mention something that came up in a discussion yesterday with Kansas Farm Bureau members who were quite concerned about the effect of the regulations, not on their own operations, but on their local school districts, their school systems, because they began to talk about the imputing of income to school bus drivers who take the school buses home in the afternoon so they can begin an early morning the next day.

They are concerned about the fact that the school bus drivers will have this new taxable income attributed to them. The school district, in turn, might be forced to increase salaries to the school bus drivers and the cost escalating to the school districts.

So in conclusion, I would just say that again Farm Bureau supports a repeal of the contemporaneous recordkeeping requirements and we urge the Ways and Means Committee to consider such legislation. Thank you.

[The prepared statement follows:]

STATEMENT OF GRACE ELLEN RICE, ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION,
AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation is the nation's largest agricultural organization with a membership exceeding three million member families in 48 states and Puerto Rico. We appreciate the opportunity to appear before the Committee today to represent the interests of our farmers and ranchers who produce virtually every type of commodity grown on a commercial basis in this country.

Farm and ranch vehicles are an important part of farming and are used daily to transport farm labor, supplies, livestock, and commodities. Because of the importance of farm vehicles to agriculture, we continue to be concerned about proposed and temporary regulations originally published in the Federal Register on October 24, 1984, and modified on February 20, 1985, that expand business use of automobiles or "listed property." Although the Internal Revenue Service has now modified the regulations to provide "safe harbors" for certain types of vehicle use, we continue to support repeal of contemporaneous recordkeeping requirements, which are unduly burdensome and potentially unenforceable. The behavior of the federal government has made taxpayers weary and causes us to wonder where the next assault on taxpayers will come. This is true particularly since there is a major tax bill at least every other year followed by a technical corrections act and regulations that compound the uncertainty of tax law.

In January, voting delegates at the American Farm Bureau Federation's annual meeting opposed the "mileage log" requirements of the new tax law. While the intent of this particular portion of the Deficit Reduction Act of 1984 may be appropriate to prevent abuse of the investment credit and accelerated depreciation for so-called luxury vehicles, the recordkeeping requirements are inappropriate and increase regulatory burdens at a time when the Administration is pledged to regulatory reform.

We are certain the Internal Revenue Service has received a number of comments that raise fact situations never anticipated when the regulations were drafted. These fact situations, whether they involve farmers, small business owners or independent contractors, illustrate the point that prior law, which required adequate but not contemporaneous recordkeeping, is preferable to the new law.

Even with modification to include the 80/20 and 70/30 percentage allocation of business/personal use without contemporaneous records or the recordkeeping of only personal use, problems continue to exist. The Committee asked for examples of specific burdens that remain after the Internal Revenue Service revision. Given the fluctuation of gross farm receipts due in part to sporadic markets, it is possible that a farmer who might qualify for one of the two alternatives under the 70 percent gross income test might be disqualified in a succeeding year. This is true particularly when a spouse earns off-farm income. For instance, assume a situation in which

the farmer has gross receipts of \$70,000 and the spouse has earned income of \$30,000 (not passive investment income) for a total of \$100,000 gross income. If gross farm receipts drop to \$60,000 the following year, the percentage of the farmer's gross income falls to 67 percent and the status of the recordkeeping requirement is thrown into confusion. What happens? Must the farmer, if he plans to receive the benefit of the investment credit or ACRS, revert to contemporaneous recordkeeping with all the attendant problems that have already been adequately presented to the Committee? Must the recordkeeping method change because arbitrary percentage requirements have not been met although the type and extent of use have not changed? In addition, a farmer who claims a business/personal mix of 90/10 percent and chooses to record personal use can expect the Internal Revenue Service to challenge vigorously the personal use records. Farm employees who drive vehicles home can expect to have the commuting value of the vehicle imputed to them as a taxable fringe benefit for which the employer may withhold taxes. This only adds to the recordkeeping burdens for the farming operation. These are important unanswered questions and situations. We believe that sufficient answers rest in repeal.

Farm Bureau supports legislation in Congress to repeal completely the contemporaneous recordkeeping requirements. Constituent response to the issue has helped generate a significant number of cosponsors on repeal legislation such as H.R. 531 (Anthony, D-AR), H.R. 600 (Roemer, D-LA) and S. 260 (Heinz, R-PA and Pryor, D-AR). We encourage the House Ways and Means Committee and the Senate Finance Committee to give serious consideration to these bills because repeal is the only acceptable remedy to these regulatory problems.

Thank you for the opportunity to present Farm Bureau's testimony.

Mr. RANGEL. Thank you very much.

Mr. Satagaj.

STATEMENT OF JOHN S. SATAGAJ, DIRECTOR OF GOVERNMENTAL AFFAIRS, AMERICAN ASSOCIATION OF NURSERYMEN, INC.

Mr. SATAGAJ. I am here today on behalf of the American Association of Nurserymen. We represent over 3,000 firms in the nursery industry. There are basically three types of firms, what we call wholesale growers, landscape firms, and garden centers. We support repeal of the 1984 regulations.

The reasons for this, is that we are probably a worse case example of what happens when you have bad regulations and you try to fix them, because the new revisions to these regulations cause us as many problems as the old ones.

Our firms are your classic small businesses. They are family owned, and family operated, as well. Very much hands-on operations. They have small office staffs, and in our case, are very transportation intensive.

What is happening is as follows: Our growers are what we think of as traditional farmers, they harvest the crop and so forth. The landscape and garden centers are generally what we consider retailers.

If it were just left like that, we would have a problem within our industry explaining to our landscape and garden centers how part of the industry is exempt and they are not, but unfortunately it is not even as simple as that because most of our industry is what we call mixed used, that is, the nursery handles the product from the time they plant it all the way to the consumer. So the result is they have a little retailing, a little landscaping and some growing all in the same operation.

So the question is what is going to happen with the 70-percent rule. Is it going to apply or not? In our case as long as there has been an industry, we have been generally considered agriculture across the board unless you were a separate retail establishment.

There are a lot of questions in the minds of our members on whether that 70-percent rule is going to catch them or not.

It is our belief that if you go into any community and take two nurseries across the street from each other, it is going to be pick or choose which one is, in fact, going to fall within that farmer exemption. It is a very difficult problem for them.

The second carved out exemption which was talked about today is this so-called business use only rule, that if the vehicles are kept on the premises and used for business only, then there is no problem, except there is one caveat to it, that the vehicle cannot be used at a site which is both the business location and the residence.

Now, in our case, most of our nursery owners, in fact, live on their nurseries as do a lot of their key employees. The result is going to be that they are not eligible for the business use only exemption because it says any vehicle which is used by any employee who lives on the same premises at which they do business is not eligible for that exemption, a major problem for us.

For those who do not live on the same premises, they have another problem because most of them are 1-percent owners and they will not be eligible for the special commuting rules. So they are caught either way on that problem.

In one sense, what has happened here for those who are eligible for an exemption is that we have shifted the burden. We have taken it from paperwork and now have put it in the category of employee judgment, and this is an important matter particularly, I think, in agriculture. I think we recognized agriculture provides an opportunity for a lot of employees without education to find work, and they may not be the most qualified, like you or I here today, to decide what is de minimis.

So what we have added here are additional compliance costs, management costs, enforcement costs, all on the employer to teach his employees on what is personal and what is not. You can see what is going to happen.

We have heard of instances already where there are services out there which will teach your employees how to figure out what is the personal cost and what is business costs.

I think, to sum it all up, the feeling of our members is there is not a whole lot of revenue to be gained here and a lot of paperwork, and they do not understand what is happening. They are very angry, very confused like everybody else. I think we have heard from more than half of our membership on this matter, and that is quite extraordinary.

So for these reasons, I think they are examples of why the new revisions really do not help the farm community or the business community and we need to go back to the pre-1984 law.

Thank you.

[The prepared statement follows:]

STATEMENT OF JOHN S. SATAGAJ, AMERICAN ASSOCIATION OF NURSERYMEN, INC.

Mr name is John Satagaj and I'm here today on behalf of the American Association of Nurserymen (AAN). Over 3,000 firms in the nursery industry, including growers, landscape firms and garden centers are active members of AAN and almost all of them are small businesses.

Our members overwhelmingly support the repeal of the provisions of P.L. 98-369, which requires contemporaneous substantiation of the business use of vehicles. De-

spite the revisions of February 20th to the IRS temporary regulations, the burdensome requirements of the law remain, and a further burden has been added, because the impact of the revisions can now vary greatly within a single industry.

To understand the implications of the revisions, it is necessary to understand the make-up of our industry. As I mentioned, our principal businesses are growing, landscape and garden center operations. The typical grower is an entity with which we, as consumers, are seldom in contact. The grower generally "starts" plant, growing it for several years until the plant reaches a mature saleable size.

The grower usually sells its crop to a retail operation (either landscape or garden center) for resale to the consumer. The landscape firm is the firm which handles the landscaping of your home or business. The garden center is the retail establishment with which the consumer is most familiar.

Section 1.274-6T(b) of the revised regulations, which provide for new record keeping requirements for vehicles use in the business of farming, is obviously of interest to us. Farming is defined in Section 1.274-6T(b)(2) as "cultivating land or raising or harvesting any agricultural or horticultural commodity, or the raising, shearing, feeding, caring for, training, and management of animals."

Our grower is most like the "farmer" as defined in the revised regulations. We would be hard pressed to explain to our landscape firms and garden centers why part of the industry is exempt from record keeping requirements and they are not if the divisions of activity within our industry were so clearly drawn.

Unfortunately, the matter is not even quite that simple.

The substantial majority of our members operate "mixed use" companies, that is, growing, landscape and garden center retailing are all part of the same operation. Nearly all of the firms can lay claim to farm activities as defined by the regulations.

For nearly 100 years, the combination of horticultural retailing and growing has been considered an agricultural operation. If farming is defined narrowly, how does one explain to the nursery owner whose firm receives 60% of its income from "farming"—that is, cultivating and harvesting—and the remaining 40% from delivery and sale of the same plant to the consumer, that the firm is not eligible for the farming exemption under these rules? The point is the arbitrary formulas of the revised rules create more questions than they answer.

Our industry is a prime example of a business which sits on the edge of these "carved out" exemptions. No two businesses within our industry will fall within the same mix or rules. Some will be able to take advantage of the farming exemption, but the next door neighbor will not, even though their businesses are the same.

Likewise, many of our nursery owners live and work on the same premises, and use nearly every vehicle owned by the company. According to Section 1.274(c)(2)iii, those vehicles would not be eligible for the "no personal use" exemption because the residence and business are at the same location.

This is a matter of grave concern to our members. We have heard from over 1,500 of our 3,000 active members. From their responses we have able to develop a profile for you. Whether it is a grower transporting products to market, or a landscape firm transporting products and employees to a job site, our industry is transportation-intensive in proportion to the size of the typical firm.

The average dollar volume is \$2 million and the average number of employees range from 25 to 75, depending on the season. The number of vehicles can range from one or two to a fleet of hundreds. The average firm has 14 vehicles, of which 2 or 3 are cars, 6 or 7 are pickups or vans, and 4 or 5 are trucks. Frequently, the same vehicle will be operated by a substantial number of employees for a variety of business trips. Typically, 25 employees will have access to the vehicles and at least 3 different employees will drive a vehicle in a given day. This multiple use/multiple operator situation creates the most compliance problems for us.

Once a nursery is able to sort out the various "safe-harbors" in the revised rules, a substantial amount of paperwork remains. In a small business it becomes a matter of allocating scarce resources. Several difficult years have trimmed what fat there may have been in most small businesses, and they are stretched thin. Who is going to manage the compliance program within their organizations? Further, there is a direct correlation between record keeping and productivity. In personnel hours, the time spent on compliance in our industry will likely exceed the revenue to be gained.

To an extent, we have traded one type of burden for another in these revisions. In the original version we were confronted by massive rote work. In certain situations we have eliminated those requirements and substituted judgment decisions by the employee. What may be obvious "de minimis" personal use or business use to you or me, may not be do to an employee. By adding these rules the IRS has burdened businesses with additional supervision, training and enforcement costs. It is simply

a fact of life that, on the average, the agricultural worker is not a greatly educated individual, although he still has access to, and is responsible for, employer vehicles. It is my understanding that "services" have already sprung up which will train your employees in the intricacies of the law. Most firms lack the ability to monitor their employees, and unlike the businessman, the employee is not likely to be familiar with record keeping responsibilities.

The subject of the valuation of fringe benefits is not before this Committee today, but the issues are certainly related. While we understand the rationale for the taxation of fringe benefits, these business/personal use records are sure to lead to employer-employee animosity. A small firm, with 25 to 50 employees is going to have to make hundreds of calculations four times a year to determine the taxable fringe benefit resulting from these detailed records. As bad as that may be, it is not nearly as bad as the problems which will surface when employees begin to see the change in their W-2's. A few dollars means a great deal to the typical agricultural worker. Likewise, the rules which penalize individuals who own at least one percent of the company, is a disproportionate burden on small firms. Small business owners are more likely to be involved in the "hands on" aspects of the business and their use of vehicles is going to require the most extensive record keeping.

Our nursery owners were surprised to learn that there is a compliance problem. Of the many issues which have been raised upon audit, they have rarely had a problem with business use. Where questions have been raised, they generally indicate that there was a satisfactory resolution of the challenge. The so-called "safe harbors" seem to them to be inequitable, arbitrary cut-offs which do not reflect business realities. The case by case resolution of business/personal use under prior law was an efficient and fair system in their estimation.

We do support efforts to ensure the fair collection of tax revenue. The law has always required that adequate records be maintained. If a person intends to "cheat" on his taxes it's going to happen regardless of how many records have to be kept. At the same time, these rules hinder the bona fide businessman who has legitimate claims. It is a question of balance. As far as we can determine there is very little evidence which demonstrates the need for such stringent requirements. This is a good example of why the small business Regulatory Flexibility Act should apply to Department of Treasury and IRS actions. The law was specifically designed to ensure carefully balancing of the benefits and burdens of regulations as they effect small business. We have been making changes in the tax code at a dizzying rate in recent years. As we focus on individual issues it is easy to lose sight of the total tax burden, particularly compliance costs. I think most small nursery owners believe the burdens have increased rather than diminished. They have difficulty understanding why the government must create such complex rules to collect a modest amount of revenue.

As I mentioned earlier, some 1,500 of our 3,000 Active members have contacted us regarding this matter. I've had a chance to visit with many nursery owners who have not taken any active role in contacting their Representative. When asked why, the most frequent response is "I am afraid they'll come after me." The IRS does strike fear in the hearts of honest business owners. They are uncomfortable with their relationship with the IRS, yet these small business owners represent the backbone of the voluntary revenue collection and compliance system. They view the world as made up of honest taxpayers. The IRS, for whatever motivation, some of it justified, views the world as full of tax evaders.

These regulations are replete with examples of IRS' obsession with tax avoidance. On page 7039 of the Federal Register announcement, dated February 20, 1985, the IRS addresses a possible "loophole" in the proposal that a taxpayer could elect to record personal use and then claim no personal use obviating the need to have a log.

The text states: "If a taxpayer chooses to keep records of the personal use of a vehicle and claims that there is no personal use, the IRS anticipates establishing a requirement that the taxpayer must submit a statement certifying that no personal use of vehicle has occurred." The statement in itself is reasonable, but then the IRS included what it obviously considered a necessary sentence, but is only viewed by the average business person as a flippant statement. "Of course, the IRS would retain the right to challenge the claim of no personal use." It is exactly this tone which places the IRS and the business owner on an adversarial plane.

The regulations and the newest revisions are strained attempts at trying to catch a few fish by sweeping up all you can in a net and then ripping a hole in it to let few fall out at random because the net weighs too much.

AAN participates in two major coalitions which support repeal. The Small Business Legislative Council, which consists of 88 small business associations, voted this

a major priority at our January 1985 issues conferences. We also are members of an ad hoc coalition of over 50 associations, which support repeal of the law. In recent days all members of Congress have received a letter from this group.

We strongly advocate a return to the pre-1985 status. We believe most small firms are honest taxpayers and the previous system did yield the proper revenue without unduly burdening the taxpayer or the Service. We do not believe the problem can be "fixed" by further revision of the regulation. We urge repeal of the P.L. 98-369.

Thank you.

Mr. DUNCAN. I have no questions. I want to thank the panel, Mr. Chairman.

Mr. RANGEL. Mr. Daub.

Mr. DAUB. Mr. Chairman, thank you very much. I spent my adult years in business, in agribusiness and agriculture. So, Mr. Chairman, I appreciate this panel being included in the hearings today. I think that we have received some very cogent testimony about how the regulatory effect of a well-intentioned change simply went beyond what I think any of us intended. Your examples serve to educate us about the practical effect of what is at stake. I do favor repeal, but I would say for the record I favor a much more comprehensive look at this subject over a simple straight repeal. Repeal by itself might create several other problems because of tandem relationships and what we have done vis-a-vis the \$16,000 car and the fringe benefit issue and the aggregate.

So I think we have some other problems here that we will have to take a look at. Let me say that I ran 100 trucks on the road carrying cattle and hog feed up and down country roads. I understand the relationship of a rancher who has an employee living in the bunkhouse on the home place. Further, I understand what happens when he has to get on a backhoe and goes out to work or when he has an irrigation pipe truck to move or when he has a nurseryman's seed stock problem and is faced with the 1-percent ownership rule. So, I personally, am glad you are here and I am glad you contributed your views for the record.

Let me ask this question and any one of you can answer it. The Treasury regulations are based upon the theory that value is conveyed merely by having an employer-provided vehicle available for use. Would everyone's interests be better served to return to a concept of taxation based on actual use?

Mr. ROSS. In our view, yes.

Mr. SATAGAJ. I think so, too.

Mr. DAUB. That is the only question I wanted to ask. Thank you very much.

Mr. RANGEL. I want to thank the gentleman for the support he has given the panel but more importantly for the support and experience and background that he brings to the full committee. And as he pointed out, we all are very sensitive to the problems that have been created, and I think that you should feel some degree of satisfaction that your contribution will be bringing about some meaningful change. Thank you very much.

Mr. ROSS. Thank you.

Mr. SATAGAJ. Thank you.

Mr. RANGEL. The next panel is Frank McCarthy, vice president, National Automobile Dealers Association; George Cook, vice president, National Parking Association and he will be representing the Small Business Legislative Council as well; Larry Lineberger,

Daniel Construction Co.; he will be representing the Associated General Contractors of America; Louis Miran, past president of the National Society of Public Accountants; and Albert Wolpert, president of the American Automobile Leasing Association.

We welcome the panel. We thank you for your patience. We would liket to advise you that your full statements will appear in the record. You can feel free to highlight your testimony. And we ask Mr. McCarthy so start off.

**STATEMENT OF FRANK E. McCARTHY, EXECUTIVE VICE
PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

Mr. McCARTHY. Thank you very much, Mr. Chairman. My name is Frank McCarthy and I am the executive vice president of the National Automobile Dealers Association representing over 19,000 new car dealers and truck dealers in this country. We appreciate that the full statement is in the record, and we would like to emphasize three points.

Mr. RANGEL. Without objection your full statement is in the record.

Mr. McCARTHY. Thank you. The first point I do not think we have heard at these hearings, nor did Treasury take it into consideration. It is that we are greatly concerned that these withholding requirements and contemporaneous recordkeeping requirements are going to force many employers into not buying new vehicles. We have already had reports from many small companies and large companies that they are going to require their employees to purchase the vehicles and that the employer will no longer purchase vehicles for business use.

The revenue loss to the Treasury due to lost profits by manufacturers and dealers will be enormous and we think will go a long ways toward eliminating the actual benefit the Treasury had estimated, between \$100 and \$200 million.

In addition to that we did some research as to how much it would cost just new car dealers to comply with the regulations. I might add we put out a comprehensive management guide to our dealers which woke them up and let them know how difficult it is to comply.

But in the survey we did it shows it is going to cost each dealer almost \$8,000 to comply with these regulations. Then we did a computation for the retail auto industry, and in our business alone the Treasury is going to have a \$21 million net loss because of these withholding requirements and these recordkeeping regulations.

So the first point I want to emphasize is there is going to be a dramatic reduction in sales of new cars and trucks which is going to cost the Treasury money. The cost of complying is going to be great, over \$0.5 billion for all people, and here we have a proposal that we think is going to be a net cost to Treasury and is going to cause a lot of people a lot of trouble.

The second point that I would like to make deals with withholding. I know this hearing is primarily on recordkeeping, but we really cannot come here and not talk about withholding. The biggest burden and the biggest cost for most employers will be the requirement to withhold. And for dealers it is impossible to compute

the actual amount on a quarterly basis to withhold because one person may drive a car for less than 30 days; he is stuck with the rental value of the car; somebody else more than 30 days; he has the lease value of the car, and on you go.

To compound that, when you have wages which require withholding, then you are stuck with computing the Social Security tax and other matters which you have to compute on an exact basis and it simply cannot be done.

So we would like to stress that the withholding requirement is probably the most burdensome provision with which we are faced. We would strongly suggest that the Congress only require that this additional personal use income be stated on the annual W-2 form that is provided to each employee and not be subject to withholding. If that is done, as it is done today on insurance premiums for insurance over \$50,000, it would be reflected on the W-2 statement. The IRS would be alerted to the fact that somebody had income over and above wages. And they would have an enforcement vehicle. So we do think that the withholding requirement should be eliminated since it would reduce the cost of complying and would go a long ways toward eliminating the burden placed on the employer.

The last point that I would make is that the recordkeeping is twofold. First, it is on the individual employee. Many people have testified as to the unreasonable burden it imposes, and we agree with all of them; the second one, there is a requirement on the businessman himself. He must keep these records to justify his business deductions.

And in a dealership, once again, this is next to impossible. We have been told by IRS that for every car which a dealer has in inventory to sell, he has to keep logs on each one of these to justify his business deductions in association with that car. It is simply impossible.

So as a minimum we think that for automobile dealers, they should at least eliminate the recordkeeping for all vehicles which are not yet titled. We think we can establish the fact that these cars are truly held in inventory, they are held for sale to the public, and they are not really purchased for transportation purposes.

So I conclude with that. On behalf of our dealers we would hope the committee would take prompt action because in all my years of working on legislation we have never had an outcry for relief as we have on this matter. Thank you very much.

[The prepared statement follows:]

STATEMENT OF FRANK E. MCCARTHY, EXECUTIVE VICE PRESIDENT, NATIONAL
AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman and members of the committee, my name is Frank E. McCarthy, and I am Executive Vice President of the National Automobile Dealers Association. On behalf of NADA's 19,000 members, I would like to express our appreciation for the opportunity to testify before you today on the automobile recordkeeping requirements under the Deficit Reform Act of 1984 and the IRS regulations issued pursuant to that Act.

We plan to address three major topics in our testimony today. First, that the statutory and regulatory scheme regarding the use of automobiles will not only result in a reduction of automobile and light truck sales, but will fail to add any additional revenue to the Treasury. Second, that Congress should eliminate the administrative

burden of requiring that employers withhold taxes on any income imputed to an individual as a result of the use of a company vehicle. And third, that Congress should definitely eliminate the burdensome recordkeeping requirements which are now being imposed by IRS regulations.

I. THE STATUTORY AND REGULATORY SCHEME REGARDING USE OF COMPANY OWNED AUTOMOBILES WILL HURT AUTO SALES

It is estimated that the automobile use provisions will raise \$150 million in revenue. However, it is our judgement and the judgement of many other businesses that the cost of complying with these requirements will, in all likelihood, exceed one half billion dollars a year which, as a result of legitimate business deductions, will result in a substantial net loss in revenue for Treasury.

In addition, we project that the automobile and truck industry will suffer from reduced sales and a diminution of profits, which will translate into reduced tax revenues for Treasury. For example, we have information that Security Pacific Bank, as a result of these recordkeeping and accounting requirements, will eliminate its large fleet of automobiles. We have likewise received reports from our dealers that many construction companies are considering elimination of company cars and trucks. It has also been estimated by the Associated General Contractors that their members will purchase 75,000 fewer vehicles as a result of these requirements. We believe that this is just the beginning, and that many other companies will likewise reduce or eliminate their fleets as a result of these burdensome requirements. In the final analysis, this type of response by thousands of companies will lead to a loss of both automobile manufacturers, a possible reduction in employment within the industry, and a loss of revenue for the Treasury.

II. CONGRESSIONAL ACTION SHOULD INCLUDE ELIMINATION OF WITHHOLDING ON VEHICLES FOR ALL EMPLOYEES

We feel it is extremely important that Congress eliminate the employer's responsibility to withhold taxes on the income that is imputed to individuals as a result of any personal use of company vehicles. First, the cost of the paperwork by the inclusion of a withholding requirement is greatly increased. Second, it is extremely difficult to keep track of vehicle values, especially in a dealership operation where employees are constantly using different vehicles.

Dealers do not purchase cars for general transportation purposes, they inventory vehicles for sale to the public, and do not claim depreciation or ITC on the vehicles their employees drive. Their employees often drive a large number of different vehicles during the year, and the vehicles that they drive are always for sale. Consequently, from an accounting point of view, it is almost impossible for a dealer to comply with these requirements. Third, other factors create special problems for dealers in the withholding area.

For example, dealers have frequent turnover in their inventory, and it is very difficult to determine whether an employee will be using a vehicle less than 30 days at a higher value or whether the employee keeps the car in use for a longer period of time at a lower lease value.

The matter is further complicated by the fact that such things as retirement plans, FICA (social security), etc. are based on compensation subject to withholding and it is impossible to make these computations on a quarterly basis, which is required by law, since the income impact on the vehicle cannot be determined until the end of the year.

It should also be noted that the Treasury will receive no real benefit from the requirement that the income imputed to individuals from the use of a vehicle be subject to withholding tax. The benefit to the Treasury of holding the tax money for a few months is more than offset by the deductibility of the expense incurred by companies in maintaining records and complying with all of the withholding requirements.

Withholding does not provide any additional enforcement mechanism, since the person using the vehicle is not identified with the submission of withholding taxes. In addition, there is precedent for including some forms of employer provided benefits merely as income, but not as wages subject to withholding. For example, life insurance premiums paid by an employer for a life insurance policy for a face amount in excess of \$50,000 is included in a lump sum amount on the W-2 form of the employee at the end of the year, but is not subject to withholding requirements. We strongly recommend that the same treatment be provided for the use of vehicles. The amount of income to the employee should be included simply on the W-2 of the employee and reported as such to the IRS. By reporting this additional

income on the W-2 form, the IRS would be on notice that such an employee had income in addition to his wages. This information could be used for enforcement purposes for collecting taxes from the individual for personal use of the vehicle.

III. CONGRESS MUST ELIMINATE RECORDKEEPING REQUIREMENT

Finally, Congress should definitely eliminate the burdensome and unnecessary recordkeeping requirements. We think that it is clear from the broadbased expressions of concern that everyone is confused and feels harassed by this burdensome requirement. However, dealerships have even greater problems with these recordkeeping requirements. The IRS regulations contemplate that vehicles to which these regulations apply are purchased by a business solely for transportation. Franchised dealers are unique in that they do not purchase cars for general transportation purposes, but rather purchase cars for resale to the public. The recordkeeping requirements proposed by the treasury have created an unworkable situation for franchised dealers. Their employees often drive many different cars during the year, and the vehicles that they drive are always for sale. Current rules imply that dealers have to maintain logs on all vehicles held in inventory. This will require hundreds of logs in each dealership and imposes an unreasonable burden on a dealership. As a result of the unique situation of a franchised new car dealer, we would recommend that no formal recordkeeping requirements be imposed on the use of dealership vehicles which have never been titled.

Mr. Chairman, we appreciate the opportunity to be heard on this very important matter, not only to dealers, but to all businesses; and we will be happy to try to answer any questions that you or any members of the committee may have.

Mr. RANGEL. Thank you, Mr. McCarthy. Mr. Cook.

STATEMENT OF GEORGE COOK, VICE PRESIDENT, NATIONAL PARKING ASSOCIATION, ON BEHALF OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Mr. Cook. Yes, sir. Mr. Chairman, my name is George Cook. I am president of Colonial Parking, Inc., which owns and operates over 100 parking facilities in the metropolitan region. I am also the vice president of the National Parking Association. Today I am representing the Small Business Legislative Council, SBLC, a coalition of 89 trade and professional organizations representing 4.5 million small businessmen nationwide.

Mr. RANGEL. Mr. Cook, could you speak more directly into the mike.

Mr. Cook. Certainly. I will not start again, but as you have indicated this is all part of the record.

The National Parking Association is a national organization formed over 30 years ago to represent the interests of the operators and builders of commercial parking facilities. Today the organization has over 1,000 members nationwide and is the largest association representing that industry.

The association members are a broad constituency. Most are small to medium sized and work on a small margin of profit. Particularly employees whose responsibility it is to oversee and manage two or more parking facilities would use a vehicle to continue to and from the various company locations. Because of 24-hour responsibilities that vehicle is often as close to them as their wives in the sense that they are in and out of that car sometimes 24 hours a day in the performance of their duties. We object to the contemporaneous recordkeeping and in the interest of time I will leave the rest of this testimony to you for your deliberation.

One of the problems with adlibbing when you have prepared something is you often say something that gets you in trouble. I am

aware that oftentimes records can be expunged, and in the interest of my wife giving me a hard time I trust that that comment will be lost.

Mr. Chairman, I would like to comment as follows: I have sat through this morning your hearings. I have myself been a legislator. I have listened to you on the other side of the bench talk to the Treasury about attacking the upper side of the problem and not getting into the down side of the problem.

Let me give you in my own company what I think to be the problem. There are some 18 people that would be involved in the recordkeeping that you are asking or that the Treasury Department is asking us to do. Of those 18, there are 3 who use their cars between 20 and 40 percent of the time for business. I am one of those.

If you add the civic endeavors that I am part of you could possibly stretch it to 60 percent. There are three whose jobs put them on around the clock performance schedules, and the car, like for a doctor, is an absolute necessity. If the wife were to take the family car and go somewhere and they get a call, then not having that vehicle would be extraordinarily bad for their performance of their company responsibilities.

Now, of the remainder of the 18 we started with, 12 absolutely utilize the pay and the car in the performance almost 100 percent. Now, we all stop short of saying 100, but in this instance they are darn close to it, and they would not have a vehicle.

So what you are doing is if you were to take my small firm and the 18 that are involved, for 16.66 percent, which are the ones you are after, you are going to be affecting the other five-sixths. And I say, as many witnesses have today, take a look at the top because that is where the abuses have been. Come up with a formula that would allow not the recordkeeping, but an honest admission as to what we are using it for, let us check it off, and get on with the business of doing business to make profits and therefore to pay taxes. Thank you, sir.

[The proposed statement follows:]

STATEMENT OF GEORGE COOK, VICE PRESIDENT, NATIONAL PARKING ASSOCIATION, ON BEHALF OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Mr. Chairman, members of the committee, My name is George Cook. I am President of Colonial Parking Inc., which owns and operates over 100 parking facilities in the Washington Metropolitan Area, and I am Vice President of the National Parking Association. I am representing the Small Business Legislative Council (SBLC), a coalition of 89 trade and professional associations representing 4.5 million small businesses nationwide, nearly one-fourth of all small firms in the country. I am also appearing today on behalf of the National Parking Association to comment on the proposed Internal Revenue Service contemporaneous record-keeping requirements relating to the business use of motor vehicles.

The National Parking Association is a national organization formed over 30 years ago to represent the interests of the operators and builders of commercial parking facilities. Today, the organization has over 1,000 members nationwide, and is the largest association representing this industry.

The Association members represent a broad constituency. However, most are small to medium size-local businesses which operate on a small margin of profit. Typically, automobiles are provided to mid and upper level executives partly as a perquisite and partly for use by the employee in the performance of his duties for the company. In particular, employees whose responsibility it is to oversee and manage two or more parking facilities would use the vehicle to commute to and from the various company locations. Additionally, employers, for security reasons,

generally prefer that company vehicles be kept overnight at their employee's residence rather than on empty unguarded lots.

The Association member's objection to the contemporaneous recordkeeping regulations and recently enacted legislation is twofold. First, the members believe that the regulations as presently proposed are oppressive, unnecessarily burdensome and complex, and in many cases, will result in the denial of legitimate business expenses. The requirement of the maintenance of a running log of every use of a company-owned automobile is a significant burden to the already over-regulated small businessman. Such businesses not only lack the resources necessary to comply with such record-keeping requirements, but also lack the ability to effectively monitor their employees, with whom the initial burden lies and who are not ordinarily accustomed to maintaining these types of records.

Second, and even more significant than the mere inability to comply, is the effect the regulations will have on productivity. Simply stated, time devoted to record-keeping is time lost to the employer. Even if as little as 15 minutes per day per employee is devoted to this record-keeping requirement, when multiplied by the number of employees and the number of work days, it becomes apparent that the cost to productivity is enormous. Estimates of the cost nationwide range from the hundreds of millions to seven billion dollars. The additional effect on productivity associated with the distraction and aggravation to the individual employee from having to fill out the required forms is not specifically quantifiable, but suffice it to say it is also likely to be significant. It should be clear that the additional revenue to be gained from the so-called "tax cheaters" (estimated at between 100 and 150 million dollars) does not warrant this type of enormous burden which will ultimately be borne by the legitimate businessman.

The Internal Revenue Service has itself recognized the unfairness and burden imposed by its regulations, as evidenced by its first amendment to be proposed regulations, which purport to "relax" the record-keeping requirements. These revisions, however, do not go far enough. They apply mainly to salesmen, farmers, and individuals who use their vehicles predominately for business purposes. They do nothing to alleviate the effect on small businessmen whose employees use their vehicles for bona fide business purposes 40 to 60 percent of the time.

It should be emphasized that the Association and its members are not opposed to a requirement that business expenses related to the use of automobiles be properly substantiated. They believe strongly in bearing their fair share of the tax burden. The Association's objections stem solely from the unnecessary and unjustified regulations proposed by the Internal Revenue Service. Under prior law, an employer or individual was required to maintain adequate records relating to these types of expenses or to substantiate such deductions by sufficient evidence corroborating his own statement. The law has always required that adequate records be maintained. It is only the Internal Revenue Service's aggressive interpretation of the contemporaneous record-keeping requirement, as enacted by Congress, that the Association finds objectionable.

The Association members uniformly agree that the Internal Revenue Service's objective in reducing and eliminating tax evasion through unwarranted and unsubstantiated business deductions is laudable indeed. However, the regulations as presently drafted have an opposite effect. Rather than thwarting tax evaders and tax cheats, the record-keeping requirements stand in the way of bona fide business deductions of legitimate businessmen. Individuals, who are predisposed to evading and avoiding taxes, can circumvent these regulations by fabrication and fraud as easily as they could under prior law. In fact, there is no empirical evidence to suggest that these contemporaneous record-keeping requirements will affect increased revenues through increased compliance. Rather, any increase in revenues is likely to be derived as a result of small businessmen's inability to comply with the contemporaneous record-keeping requirements, and the loss of bona fide business deductions. It has always been basic truth underlying our judicial system that it is better to allow a guilty man to go free than convict an innocent man. Apparently, it is the Internal Revenue Service's view, in the context of the enforcement of the Internal Revenue laws, that the innocent must suffer in order that no violators escape.

The Association, and its members, believe that further attempts to modify and relax the record-keeping requirements, as proposed by the Internal Revenue Service, will be ineffective to alleviate the problems outlined above. Thus, we urge Congress in the strongest possible terms to repeal the contemporaneous record-keeping requirements and return the country to the reasonableness and effectiveness of prior law. If Congress truly desires simplification of the tax system, this will be the first step in that direction.

The Association would also like to go on record as opposing the fringe benefit provisions, enacted by Congress, which require an employee, to include in income, the value of a company provided car to the extent the vehicle is not used in performance of services to the business. Historically, this perquisite has been exempt from taxation and numerous businesses have relied on this treatment in planning for their operation and designing their compensation and benefit plans. Generally, vehicles are provided to employees in connection with the services that they perform for the business. While we acknowledge that the vehicle is often used for personal purposes as well, and that the personal purposes may be more than incidental, the primary and initial impetus for providing the vehicle is its use in service to the employer.

The benefit the employee realized from the employer-provided automobile is in many ways analogous to the no additional cost service type fringe benefits that are excluded from an employee's income under present law. For example, Congress has recognized that the provision by airlines to employees of free seats on commercial carriers may be excluded from the employee's income on the grounds that it costs the employer nothing. For many small businesses, the provisions of a vehicle to employees is a business necessity. The fact that the individual employee uses the vehicle for personal purposes as well does not impose an additional cost on the business. In these circumstances, the Association believes that the value of the personal use of the automobile should be treated as a qualified fringe benefit and excludable from the employee's income.

Regulatory Flexibility Act of 1980 (5 U.S.C. 602 *et seq.*) The only estimation of the Many employees who are presently provided cars by their employers are obligated under leases for periods up to three years. Many employees, if required to include the value of this "benefit" in income, would elect not to accept the company car, preferring instead to receive the value of such compensation in cash. This, of course, will impose additional cost on the employer since he will still have to incur the cost of the vehicle which is necessary in his business. The Association believes that an exception to the requirement that the value of the vehicle be included in the employee's income is necessary for arrangements presently in effect and which cannot be terminated.

On behalf of the National Parking Association and its members, I thank you for the opportunity to appear here today, and urge you to consider our appeal for the repeal of the contemporaneous record-keeping requirements and for modification of the fringe benefit rules as they relate to automotive vehicles.

Mr. RANGEL. Thank you, Mr. Cook. Mr. Craig.

STATEMENT OF DALE K. CRAIG, CHAIRMAN OF THE BOARD, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. CRAIG. Thank you, Mr. Chairman and members of the committee. My name is Dale K. Craig, president of Craig Transportation, Perrysburg, OH. My company is a transporter of grocery items operating in 18 States. We utilize the services of 110 owner-operators plus 40 employees. Our gross revenues for 1984 were \$7,200,000. I am appearing today as chairman of the board of American Trucking Associations. Our member carriers are engaged in every type of freight cartage, both for hire and private. I appreciate this opportunity to appear before you to express our concern about the proposed IRS regulations for contemporaneous record-keeping.

I also want to state that we have equal concern about the rules affecting the evaluation of fringe benefits and we intend to address that issue at another time.

Mr. Chairman, the IRS's temporary regulations still leave many problems for the trucking industry. In particular, these recordkeeping requirements should not apply to trucks because their use is strictly supervised and controlled. And, second, the regulations are so complicated and burdensome that they go far beyond the legislative intent.

These problems affect all segments of our industry, large and small carriers, company salesmen, mechanics, and our drivers, both company employees as well as independent contractors.

While the proposed regulations are attempts to provide compliance procedures for taxpayers, we feel that the problem lies with the contemporaneous recordkeeping requirements mandated by the Tax Reform Act of 1984. We, therefore, seek your support to repeal the appropriate sections of that act.

We realize that the contemporaneous recordkeeping provisions were aimed at curbing a tax abuse, but the trucking industry is not the culprit. Trucks are our business; they are expensive pieces of equipment used to haul freight. Their use is strictly controlled, supervised, and documented. Obviously, this industry cannot earn income if our employees use our only revenue producing asset for personal use. For anyone to think that a \$75,000 truck is used for vacations, grocery shopping, movie going, or the like is absurd.

However, this is not taken into account because the proposed regulations require that logs be kept by some truckers the same way automobile users must keep them. For example, under the proposed rule an independent owner operator who keeps his truck at home, which is usually also his place of business, would be required to maintain automobile logs.

We have the same problem of keeping logs for company supplied service vehicles, vans and automobiles. For reasons of economy an employer often finds it more productive for an employee to keep the vehicle at his home. We feel the proposed rules are burdensome, costly, and far too complicated.

We have found that after checking with a number of professional accountants there is a broad diversity of opinion as to how to comply with the rule.

As to cost of recordkeeping the trucking industry already knows that it is expensive and is an administrative headache for drivers and supervisory personnel. Presently we are required by the Department of Transportation safety regulations to maintain contemporaneous driver logs. In 1981 the Bureau of Motor Carrier Safety, a part of DOT, completed a study of its hours of service logkeeping requirements and discovered that the cost to the trucking industry was more than \$1 million per day.

The cost factors include the purchase and the distribution of log forms, preparation by drivers, and processing and storage by management.

In closing, let me say that the trucking industry has always paid its fair share of the Federal tax burden. In fact, the trucking industry has one of the highest effective tax rates in American industry. We believe that bona fide business expenses should be justified and documented. However, I would like to emphasize that under no conditions should trucks be subject to the contemporaneous recordkeeping requirements proposed by the IRS.

Such additional log requirements just add another blizzard of paperwork and interfere with normal business operations. In addition, these complex rules contradict the main themes of 1985, paperwork reduction and tax simplification. Mr. Chairman, the American Trucking Associations strongly believe that these provisions should not apply to trucks and we urge that you give favor-

able consideration to repeal the onerous recordkeeping requirements. I will be happy to respond to any questions that you or the committee may have. Thank you.

[The prepared statement follows:]

STATEMENT OF DALE K. CRAIG, CHAIRMAN OF THE BOARD, AMERICAN TRUCKING ASSOCIATIONS, INC.

My name is Dale K. Craig, President of Craig Transportation Co., Perrysburg, Ohio. My company is a transporter of food stuffs operating principally in the eastern central portion of the United States. We utilize the services of 110 owner-operators and have 40 full time employees. Our gross revenues for 1984 were \$7,200,000.

I am appearing today as Chairman of the Board of the American Trucking Associations, Inc. ATA is a national federation of 51 state associations and 11 affiliated conferences. Our conferences include the American Movers Conference, National Tank Trucker Carriers, and the Interstate Carriers Conference. Our member carriers are engaged in every type of freight cartage, both for-hire and private.

I appreciate this opportunity to appear before you to express our concern about the proposed IRS regulations for "contemporaneous" record keeping. I also want to state that we have equal concern about the rules affecting the valuation of fringe benefits, and intend to address that issue at another time.

Mr. Chairman, the IRS' temporary regulations originally issued on October 24 and most recently, amended and published on February 20, still leave many problems for the trucking industry. These unresolved issues will affect all segments of our industry; big and little carriers, company salespeople and mechanics and our drivers, both company employees as well as independent owner-operators.

While the proposed regulations are an attempt to provide compliance procedures for taxpayers, we feel that the problem lies with the "contemporaneous" record-keeping requirements mandated by the Tax Reform Act of 1984. We, therefore, seek your support to repeal the appropriate sections of that Act.

I would now like to turn away from the problem in the law and try to illustrate what problems the IRS' temporary regulations create for us.

We realize that the contemporaneous record-keeping provision was aimed at curbing a tax abuse, but the trucking industry is not the culprit. Trucks are our business and our primary income-producing assets. Trucks are costly to purchase. Their use is strictly controlled and supervised. For anyone to think that a \$75,000 truck is used for vacations, grocery shopping, movie-going or the like is absurd. However, the proposed regulations require that logs be kept by some truckers the same way automobile users must keep them.

For example, under the proposed rules, an independent owner-operator who keeps his truck at home, which is also his place of business, would be required to maintain "automobile logs."

We have the same problem with keeping logs for company-supplied service trucks, vans and automobiles. For reasons of economy (labor costs, vehicle operating costs and time and distance constraints), an employer often finds it more productive for an employee to keep the vehicle at his home.

Although these vehicles are more susceptible to personal use, they are required, in most cases, by company policy to be readily available for business use. To illustrate, our road mechanics respond to service calls from drivers of broken-down vehicles at all hours of the day and night. The same policy and logic applies to our safety supervisors. Although they are equipped with a standard passenger automobile, they are also on 24-hour call and respond to highway emergencies whether it is for Craig Transportation or some other motor carrier. I would much rather have my folks taking 2:00 a.m. phone calls at home than requiring them to bunk at the office.

We also supply our sales force with company cars. I require my sales people to be constantly on the road servicing our accounts and seeking new business. I firmly believe that the preceived abuse is not there. Even though the proposed rules attempt to ease the record-keeping requirement for salespeople, we still believe that, as in the other cases, the regulations are onerous, arbitrary and capricious and should be repealed.

Another consideration is vehicle security. In some metropolitan areas, employers have found that vehicle exposure to theft and vandalism is far less if kept at a residence.

Mr. Chairman, we feel that the proposed rules are burdensome, costly and far too complicated. We have found that after checking with a number of professional accountants there is a broad diversity of opinion as to how to comply with the rules.

As to the cost of record keeping, the trucking industry already knows that it is expensive and is an administrative headache for drivers and supervisory personnel. Presently, we are required by Department of Transportation safety regulations to maintain contemporaneous driver logs. In 1981, the Bureau of Motor Carrier Safety, a part of DOT, completed a study of its log-keeping requirements and discovered that the costs to the trucking industry was over \$1 million per day. The cost factors included the purchase and distribution of log forms, preparation by drivers and processing and storage by management.

In closing, Mr. Chairman, let me say the trucking industry has always paid its fair share of the federal tax burden. In fact the trucking industry has one of the highest effective tax rates in American industry. We believe that bona fide business expenses should be justified and documented. However, we do not think that the excessive record-keeping requirements mandated by the statute are either justified or a responsible solution to the perceived problem. Such detailed log requirements interfere with normal business operations by creating an additional blizzard of paperwork. In addition, these complex rules contradict the main themes of 1985—that of paperwork reduction and tax simplification.

Mr. Chairman, we urge that you give favorable consideration to repeal of these onerous record-keeping requirements.

I will be happy to try to respond to any questions that you and the Committee may have.

Mr. RANGEL. Thank you, Mr. Craig. Mr. Lineberger.

STATEMENT OF LARRY LINEBERGER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. LINEBERGER. Thank you, Mr. Chairman. My name is Larry Lineberger. I am a financial executive with Daniel Construction, and I am here on behalf of the Associated General Contractors of America.

We are some 32,000 firms, a little over 3 million employees and think we represent 80 percent of the construction that goes on in the Nation.

We appreciate the opportunity to express our views on the contemporaneous recordkeeping requirements and we have some comments on the fringe benefit regulations as well. We have filed a written testimony that addresses the technical aspects of it, and I would like to cover some equal concerns that we have, several of which have been voiced already.

We also have no conceptual problem with the taxation of the personal use, and certainly it is at the high end of the bracket, as has previously been said. What we are asking for also is an efficient system to do so that is fair and has the least possible paperwork.

At a time when one of the most highly talked about subjects is the lack of American productivity and we are struggling to make productivity gains where we can compete with the foreign imports, then to put such a horrendous recordkeeping system on us to cope with is certainly going the wrong way.

There is no human way that the IRS or any other body could write regulations that would address all possible aspects of fairness, and I believe that they should stop trying to write a comprehensive set of regulations that could address every conceivable subject for every conceivable industry.

What we need to do instead is settle for a regulation that will get some 90 to 110 percent of the same revenue estimate with 5 percent of the work instead. And I submit that it can be done. There is

no real requirement that contemporaneous records be maintained at all in order to get that effect.

The same safe harbor treatment that was given to several other areas can be addressed for all areas and no records need be maintained other than the same reasonableness approach that we used to use. I would challenge you to put our salesmen and our executives back to work on more productive problems than maintaining these useless logs.

I would like to echo the earlier comments also on the withholding problem. I consider that the requirement on business to reprogram the Nation's payroll systems in order to have current withholding is a major expense, and there will be millions and millions of dollars spent to do that. There is no way that the early collection of the taxes, as opposed to paying them at the end of the year, can possibly be worth the money that is put into that. Certainly if the value of the employee having had the use of the money during the year is perceived to be that great, then a table can be compiled to adjust the value and take that into account at the same time without redoing all the payroll recordkeeping systems.

I submit that if the IRS would in fact sit down with the Nation's financial executives when they have a problem they want to address and ask us how is the most expedient way to get there, that we could save lots of money in the process—not only on this one, but on other ones in the future.

In addition, as regards our industry in particular, we have many people who take home the vehicles at night because we have a security problem with the sites; we have tools that need to not be left at the sites, but transported back and forth. We have also the requirement for a 24-hour respond time.

The vehicles, as you might imagine, get extremely rough wear and do not have a primary commuting use. The fringe benefit regulations, the guidelines that you laid out last year in the tax, make it clear that there is provision both for de minimis use that should not be taxed and also for a working requirement fringe. We feel like taking a vehicle home at night that is primarily designed for something other than a passenger vehicle clearly meets what you had in mind there.

Another major objection is excluding the officers and owners from the safe harbor regulations, and again the rule should be based on what the man does—not whether he owns in the company or happens to hold an officership. Our industry is characterized by thousands of small businesses, as has been previously pointed out. The valuation of the fringe needs to be based on a facts and circumstances test rather than just a mileage rule or just a table based on how much the vehicle costs. Neither one of those gets to the heart of what that fringe is worth to that man under the circumstances.

One point that has not been addressed at all by the IRS or by anyone else so far is that we already charge employees in some cases for partial use of the vehicle. In some cases that might be an adequate amount. In other cases it might not be adequate in the view of the IRS, but no suggestion has been offered for how that should be taken account of in the records, and certainly it needs to be addressed.

Thank you again for the opportunity to present our views and I would hope that we could all work together toward eliminating some of the recordkeeping requirements and trying to restore our free enterprise from the not so free system it seems to be these days.

[The prepared statement follows:]

STATEMENT OF LARRY LINEBERGER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

My name is Larry Lineberger and I am here today representing the Associated General Contractors of America. AGC represents more than 32,000 firms, including 8,500 of America's leading general contracting companies which are responsible for the employment of more than 3,400,000 individuals. These member contractors perform more than 80 percent of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities. I appreciate the opportunity to testify before this Committee on the important topic of contemporaneous recordkeeping requirements for company vehicles and related fringe benefit tax rules.

On behalf of the construction industry, I thank you for the Congressional attention that has resulted in some improvements in the IRS regulations concerning logs kept for vehicles to justify otherwise legitimate business deductions for the vehicles. The new temporary proposed regulations are an undeniable step in the right direction. Unfortunately, the new rules fall short of the relief needed in the construction industry. The construction industry urges you to take more action, either legislatively or by other direction to the IRS, to make further and more substantial changes to the regulations to reduce the still formidable task faced by construction industry employers in complying with the requirements and to alleviate the unfair tax burden which many construction industry employees are subjected to as a result of the restrictive rules used to value fringe benefits.

Although improved, the new regulations will still result in excessive paper work burdens for many contractors and the unfair tax treatment of at least some of their employees. The use of company vehicles (and other items of listed property) is absolutely essential in the construction industry. Our industry faces many unique problems with the rules because of the unique nature of construction. Contractors must use automobiles, light and heavy duty trucks, 4-wheel drive vehicles, vans, unique construction vehicles, and utility vehicles. These vehicles are subject to use in numerous job functions and by a variety of employees. For example, a pick-up truck may be assigned to a job site by a company's home office. The pick up may then be assigned to an employee on either a permanent or temporary basis. It may also be used by other employees. The vehicle may be used to make different stops at the job site and used to visit other job sites or to pick up materials and supplies. Vehicles are also provided for visiting different job sites and for use in responding to calls or providing group transportation to inaccessible sites. Maintaining an accurate log in these situations is virtually impossible and taxing employees for this work related driving as proposed is inequitable.

The new proposed fringe benefit regulations are totally inadequate in providing a fair administrative system for determining what is a taxable non-cash benefit and how it should be valued. The modification in the \$3.00 per day commuting is an improvement but in virtually every other aspect the regulations fail to provide reasonable guidelines. Both the January 7 and February 20 proposed rules fail to implement the new statutory fringe benefit exclusions added to the Code by the Tax Reform Act of 1984. This is nothing other than a classic example of an administrative agency's attempt to implement its policy positions in disregard of Congress' intent.

Prior to 1984 the IRS was prohibited from issuing any fringe benefit income tax regulations. The IRS had developed its interpretative rulings based on judicial case law which Congress recognized would result in unfair regulations if the IRS was allowed to proceed to the regulatory level. Rather than extending the freeze in 1984 the Congress incorporated four new statutory fringe benefit exclusions to give the IRS guidance in preparing regulations intended to ameliorate the inequities of earlier interpretative and theoretical positions of the Service. The new statutory exclusions covered: (1) No-Additional-Cost Services; (2) Qualified Employee Discounts; (3) Working Condition Fringe Benefits; and, (4) De Minimis Fringes.

None of the statutory exclusions are adequately reflected in the new regulations. The result of this neglect is the creation of inequitable and unfair rules which will reduce take home pay for employees performing work activities—the exact situation the statute intended to avoid.

The most significant and immediate problem confronting the construction industry as a result of IRS failure to adequately reflect the statutory exemptions is the required taxation of so-called commuting. The IRS has essentially incorporated in the regulations its earlier position on commuting contained in Revenue Ruling 75-380. This ruling held that only the incremental (additional) cost of transporting tools or equipment can be treated as a business expense when an employee takes such items to or from work. The ruling is based on the principal judicial decision in this area, *Fausner v. Commissioner of Internal Revenue*, 413 U.S. 838. The Supreme Court held in *Fausner* that an airline pilot who carried his flight bag in his own personal car from his residence to the airport was not eligible for any deduction because there was no identifiable incremental cost for transporting the flight bag. The IRS extrapolated this holding in Revenue Ruling 75-380 to conclude that the rule applied to all driving from a residence to a location where work is performed. The new ruling revoked the earlier IRS position in Revenue Ruling 63-100 which provided an administrative rule for determining the deductibility of commuting expenses when the "primary purpose" (a "but for" test) of the trip was to transfer work imple-
 ments.

The IRS position that all commuting must be taxed fails to recognize that the Tax Reform Act of 1984 included at least one new statutory exemption intended to modify earlier positions. The General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 prepared by the Joint Committee on Taxation gives an indication of how the exclusion is intended to apply:

"Merely incidental personal use of a company car such as small detour for a personal errand while on a business trip, might qualify for exclusion as a de minimis fringe, but regular personal use (e.g. after business hours or on weekends) or use on vacation trips cannot qualify for an exclusion." pg. 856.

The new regulations only provide for a de minimis exception for lunch stops and errands, completely ignoring the legislative explanation that all incidental personal use of vehicles in connection with work related driving should be considered a de minimis benefit. Lunch stops and errands are only examples of incidental personal use. The IRS failure to implement the statutory de minimis exemption, other than by references to errands and lunch stops, is a major failing. The failure to recognize the other three statutory exemptions in any meaningful way only compounds this serious problem.

IRS' failure to implement the statutory exemptions has extremely onerous repercussions in the construction industry. Construction job sites are extraordinarily difficult to secure as is evidenced by the frequency with which even the most casual observer will see equipment, such as compressors, dangling from cranes. In 1983 alone AGC general contractors reported industry theft and vandalism losses of \$404 million. As a result of this situation, construction contractors require employees to secure vehicles at employee's residences during non-working hours. A construction supervisor, required to take a company vehicle home under these conditions, starts his or her normal work day on entering the vehicle and finishes the day when exiting the vehicle after having securely parked or garaged the vehicle at his or her residence. Throughout the evening the employee is performing a work related responsibility of securing the vehicle.

Many of these supervisors and other types of tradespeople must also be available to respond to calls at all hours. Equipment breakdowns, construction process problems at the site caused by a variety of reasons ranging from inclement weather to safety considerations require that a variety of employees be immediately available to respond to calls. Many times the employee will require immediate access to specialized tools and equipment. Supervisors frequently need radios to coordinate work functions from their residences or while in transit. Vehicles are equipped to fulfill these work responsibilities and made available to employees to fulfill these business requirements. These employees are performing an employment responsibility when they make themselves available to respond to a call from their residences. When the employee uses the vehicle to answer the call he is continuing to perform his employment responsibilities. The employment responsibility does not begin merely when he gets to the work site. When the employee takes the vehicle to his residence, where he will be available to respond to a call, he is performing an employment responsibility. Reducing the employee's take home pay, as required by the IRS regulations, for performing these employment responsibilities is unconscionable.

Construction sites are frequently and uniquely at locations which are inaccessible. These sites can be either at remote locations or at urban sites where access is difficult or parking is unavailable. Employers must frequently provide group transportation vehicles if work crews are to be present in a timely fashion. When employees

make themselves available for group transportation for these reasons they are working and no personal benefit is being conferred.

All of the above "employee commuting" is for the convenience of the employer. Any value of the use of the vehicle to the employee for the so-called commuting is clearly secondary or merely incidental to the business purpose of the trip and the responsibilities being performed by the employee, and are clearly non-taxable de minimis fringe benefits under the provisions of the Tax Reform Act of 1984. Until the provisions of the Act are adequately reflected in the regulations, the construction industry and its employees will continue to be needlessly subjected to an abusive and discriminatory IRS regulatory position.

AGC is also concerned that the rules affecting the fringe benefit taxation for the use of items of "listed property" other than vehicles will result in inequities when applied to the construction industry. Construction contractors are frequently required to use business aircraft in their business operations. Travel requirements to and from job sites as well as traditional business purpose travel often make the use of corporate aircraft a business necessity. The use of the "Standard Industry Fair Level" (SIFL) valuation rules, particularly the 600 percent non-business flight income allocation, will result in unrealistically high-income attributions. For example, many construction sites in remote locations require that employees be provided personal transportation when leaving the site for non-business reasons. It is unreasonable to allocate 600 percent to any employee under these circumstances. Similar problems will result from the 125 percent SIFL rule for non-key employees. These inequitable income allocations result not only from the use of the SIFL formula. The failure of the regulations to adequately implement the new statutory exclusions also contributes to the inequities of the regulations in these situations. AGC recommends that the principles of the no-additional-cost fringe benefit exclusion should be reflected in the regulations by exempting air travel in seats which would not otherwise be occupied on business flights of corporate aircraft.

The most notable improvements in the new regulations are the alternatives for satisfying the contemporaneous recordkeeping requirement in lieu of logs. Unfortunately, the regulations provide relief in a limited and discriminatory fashion which will result in some individuals performing identical construction responsibilities being subjected to the onerous log requirement while others are exempt.

Officers and owners of small firms frequently perform the same responsibilities as employees in larger firms. Many of these officers or owners must spend time in an office or similar setting, in addition to their on-site job responsibilities. It is unfair to require these individuals to keep logs because of their mixed business responsibilities or business status. Yet the Internal Revenue Service, without any specific statutory authority, excludes all officers and 1% owners from using the commuting exception to the log requirement and denies the multibusinesses stop safeharbor protection to employees who spend at least part of their time in an office type setting. Minimal fairness requires some form of safeharbor protection from the onerous log requirement for these individuals.

While the owner/officer restrictions on the \$3.00 per day commuting rule is the most significant inequity with the alternative recordkeeping requirements, others also exist. For example a construction supervisor generally spends his business day making job site stops. These stops may be at different locations on the same job site such as a five mile long highway project or at completely different job sites. This same supervisor may also spend time at the home office in preparing estimates for bids, work schedules, and management planning. The supervisor will also spend time in on-site management meetings. It is questionable as to whether this superintendent would be allowed to use the multiple business stop alternatives to the log requirement because of his activities at the home office or at the job site trailer. Clearly, a safeharbor alternative to the log requirement must be available for all classes of employees.

AGC also has serious reservations concerning the application of the fringe benefit valuation rules. The temporary regulation rules for valuing the use of vehicles is based on a lease value standard with a special table outlining such value for automobiles. Vehicles other than automobiles must substitute fair market lease values in a standard formula. The valuation rules apply to taxpayers required to or electing to use logs as well as taxpayers using a log alternative to satisfy the adequate contemporaneous recordkeeping requirement.

The fault with the rules lies in their application based on the lease value standard in situations when "vehicle availability" is not a rational reflection of any benefit to an employee. For example, many trucks used on construction sites are inherently expensive due to job requirements. Structural components for off road use and hauling capacity, communication equipment, mud tires, etc. are necessary for the

job requirements but of little personal value to an employee. Yet, the regulations require that the valuation of personal use be based on the market cost of leasing the vehicle. The lease value in the market may also be very high relative to very luxurious automobiles because of the limited availability of these types of rental vehicles.

The rigid reliance on lease value of vehicle availability will also result in inequities because it assumes that mileage is an accurate reflection of business and personal use. Many vehicles used at construction sites do not acquire significant mileage amounts while in use at sites. For example, a highway project which is five miles long may require a dozen stops by the superintendent during the day. The total driving at the site may only be a few miles. If the superintendent is an officer or shareholder and also spends regular periods in an office (to participate in preparing costs estimates) he must keep a log. If the vehicle must be taken home at night for security reasons the mileage log may show a substantial amount of commuting mileage in relationship to the business mileage. The result of the regulation's formula will then attribute a larger portion of the lease value of the vehicle to the superintendent. This amount does not fairly represent the proportionate value of the vehicle between business and personal uses.

AGC is also concerned with the recordkeeping for computers used by employees in their homes. The use of computers at employee's homes is a relatively new and growing practice. Employees are frequently encouraged to take computers home when training and for business purposes. The limited recordkeeping exemption for home use based on the home office tax rules is excessively narrow. Use of computers in residential settings is a business activity which should generally be encouraged. Where the use of the computer is solely for business purposes, subject to a realistic de minimis use allowance, no contemporaneous record should be required.

We are certain that many more examples of the inequities of the valuation rules will be brought to your attention as they are studied by the entire business community. The regulations' rigid reliance on the lease value concept must be substantially relaxed to correct these inequities. AGC recommends that all the traditional methods of valuing non-cash items be specifically allowed to be elected by taxpayers based on the facts and circumstances of the individual employers and employees. These methods would include allocating incremental employer costs for the employee's personal use of a vehicle and determining the value of the personal use to the employee, i.e. the market value of the employee's need being satisfied. The specific prohibitions in the regulations of using actual employer costs of a benefit (i.e. fleet discounts) and cents per mile valuations must be rescinded.

Another area of discriminatory application to the construction industry is the application of tax benefit limitations to so-called "luxury automobiles". The preamble of the new regulations acknowledges that certain types of vehicles are excluded from the definition of "passenger automobile" and requests comments as to the type of trucks or vans that should be excluded. This request for comments on excluded vehicles is indicative of a misreading of the regulatory delegation provided in the statute and is another example of an IRS attempt to implement its own policy system in disregard of the statute and legislative history.

The Conference Report on H.R. 4170 clearly states that the term "passenger automobile *shall not* include—(iii) under regulations, any truck or van". Congressional Record, Vol. 130, No. 87—Part II, June 22, 1984, page H. 6432 (emphasis added). The legislative history of this provision shows that the regulatory implementation of the statutory rule is specifically designed to provide a broad exception to the passenger automobile definition to avoid the tax benefit limitation being applied to any vehicle which is not strictly a passenger car. The opposite interpretation is suggested by the IRS regulation comment request.

The Supplemental Report of the Committee on Ways and Means on H.R. 4170 which was released on March 5, 1979 explains the statutory language by stating: "... it (the luxury automobile restrictions) does not apply to vehicles other than automobiles (such as van or trucks)." (Title I, Section (L)(6)).

The House committee report language is consistent with Senator Baucus' explanation of Amendment No. 2974 which added the luxury automobile provision to the Senate version of the bill. Senator Baucus entered into a colloquy with Senator Dole explaining this provision at the time the amendment was offered on the Senate floor:

"... We recognize that certain 4-wheeled vehicles weighing less than 6,000 gross vehicle pounds may be expensive not because they are extravagant but, because of the particular needs of certain businesses. That is why the Treasury Secretary is directed to issue regulations exempting any truck or van. When issuing these regulations, the Secretary should exempt farm vehicles, light trucks, vans and other ve-

hicles that are not strictly passenger cars." (Congressional Record S. 4469 and 4470, April 12, 1984.)

The clearly statutory language requiring that all trucks or vans shall not be designated as luxury automobiles is well founded in sound tax policy since it applies uniquely restrictive depreciation and tax credit limitations for a certain type of asset which is considered lavish and extravagant. The consistent legislative history from both the House and Senate emphasizes that the exception should be broadly drafted and should be accurately reflected in the regulations. AGC recommends that the regulations properly reflect the regulatory delegation by exempting all vehicles from the passenger automobile classification if they have any business function other than strictly being passenger cars that are designed to provide transportation over traditional highways and roads. All 4-wheel drive vehicles, light duty trucks, vans and utility vehicles should be described as examples of vehicles which are not strictly passenger cars.

In conclusion, Mr. Chairman, we believe that Congressional involvement in the form of either legislation or by means of other direction to the IRS is essential. The changes recently published by the IRS would not have occurred without the significant interest shown by members of Congress and we believe that this interest will continue as the details of the recordkeeping requirements and fringe benefit rules are more clearly understood by taxpayers.

Unfortunately, time is becoming a serious problem. Actual withholding will be required as of August 31, 1985 and many taxpayers are already burdened by the onerous log requirement.

We urge your action, either by legislation or by direction to the IRS, to correct the previously mentioned provisions which in application are abusive and discriminatory based on the unique nature of the construction industry.

Thank you.

Mr. RANGEL. Thank you, Mr. Lineberger. Louis Mirman, National Society of Public Accountants.

STATEMENT OF LOUIS MIRMAN, PAST PRESIDENT, NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

Mr. MIRMAN. Thank you, Mr. Chairman. My name is Louis Mirman. I am a past president of the National Society of Public Accountants and a past president of the Accountant Society of Virginia. I have been in public practice for 42 years and am enrolled to practice before the Internal Revenue Service. I am accredited by the Accreditation Council for Accountancy in both accountancy and taxation and I am currently serving on the advisory group to the Commissioner of the Internal Revenue Service.

The National Society of Public Accountants consists of 17,000 individual practicing professional accountants throughout the United States. NSPA has an affiliated State organization in each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Our members provide auditing, accounting, tax and management advisory services to more than 4 million small businesses and small government entities throughout the Nation.

As accountants and small business people ourselves we feel that we are in a unique position to understand the problems of small business. We appreciate the opportunity to be here today to present our views on the provisions of the Tax Reform Act of 1984 that require adequate contemporaneous records for the business use of automobiles and other property.

I believe the only group of people who have heard more complaints about these requirements than those of you who serve in Congress are those of us who serve as accountants. One of the problems continually voiced by the commissioner is noncompliance. We find that small business people have difficulty understanding the

income tax rules, are burdened with unreasonable and onerous bookkeeping requirements, and are threatened with sanctions and penalties. Their frustrations do not enhance compliance. They understandably become embittered antagonists of the IRS. Complying under duress, over time, erodes if not completely destroys a willingness to voluntarily comply.

NSPA urges that Congress repeal the contemporaneous records requirement established in the Tax Reform Act of 1984. We propose that if a taxpayer establishes under the prior law that the primary use of the vehicle is for business purposes, then that taxpayer may claim that 70 percent of the use is for business purposes.

If a taxpayer wants to claim greater than 70 percent, then the taxpayer must establish that extra use based on adequate records. Should the use of the vehicles be for less than 50 percent, then the taxpayer will be allowed a deduction as documented.

The rule would apply to all taxpayers regardless of all types of business, ownership of business, or position in the business.

In the Tax Reform Act of 1984 Congress amended section 274(d) of the Code by adding one word, contemporaneous, and in section 6695 by adding a requirement that a return preparer advise a client of the recordkeeping requirement and that the taxpayer sign a statement that he or she complies. In November the Internal Revenue Service issued temporary and proposed regulations to interpret the legislative change. They were approximately 76 pages in length.

On February 15, 1985, in response to taxpayer and congressional pressure, the IRS issued another 57 pages of temporary and proposed regulations amending the previously issued temporary and proposed regulations. Was it Congress' intention that laws be so complex that such a change of a few words require more than 100 pages of explanatory regulations?

We, as accountants and tax practitioners, are expected by our clients and the Government to know and understand these regulations. We accept this. We are bothered, however, by the fact that all taxpayers are also expected to understand the tax laws. If they do not understand and comply, they are potentially subject to negligence penalties.

From the viewpoint of the public it appears that the penalties are more important to the IRS than the tax. Your constituents have indicated that they are less than happy with these provisions. Many of them are our clients. They are telling us that they are increasingly confused, frustrated, and annoyed with our revenue system and with the IRS.

Confusion, frustration, and annoyance encourage noncompliance. Most taxpayers will comply but not without a cost to the Government both in taxpayer resentment and reduced revenue from increased taxpayer compliance costs. Small businesses are least able to understand these new requirements and to afford the cost of the added recordkeeping.

These paper generation provisions are interrupting normal business operations and are unlikely to result in an appreciable increase in tax revenue. We question Treasury estimates of \$150 million in increased revenue in fiscal year 1985 as it is already illegal

to deduct expenses for the personal use of such items as automobiles and computers.

In addition, this revenue estimate must be balanced with what it will cost businesses to comply with and inquire about these recommendations. A conservative estimate of \$500 a year for each of this Nation's 14 million small businesses would result in a cost of close to \$7 billion a year to this segment of the business community alone. Assuming an average 20-percent tax rate on this \$7 billion cost could result in a revenue loss of \$1.4 billion. If the IRS estimate that enforcement of these regulations will result in additional revenue collection of \$150 million is correct, then the net cost to the Government will be \$1,250 million.

We propose that Congress repeal the contemporaneous record requirements. Further, we propose that in lieu thereof Congress adopt the following: If a taxpayer establishes that the primary use of the vehicle is for business purposes, it may be presumed that the business use is 70 percent and personal use 30 percent.

If the taxpayer wishes to claim that business use is greater than 70 percent, it would be necessary to establish the greater percentage through required documentation. If the business use of the vehicle is less than 50 percent, then the taxpayer will be allowed a deduction for the actual business usage measured either by reasonable mileage allowance or actual expenses based on percentage of use.

In conclusion we believe that if our country is to continue with a tax system based on voluntary compliance, laws must be passed that are simple and understandable. The laws that have been passed in the last 8 years are overly complex. Taxpayers are intimidated and frustrated by these incomprehensible laws.

As a result they are frequently unable to comply with them and the regulations. Increasingly, this frustration is leading to a refusal to cooperate. This attitude undermines the entire premise of our tax system. The contemporaneous recordkeeping provisions we have addressed here today are an example of the unnecessarily complex requirements that are frustrating the taxpayer.

Congress can take its first step toward simplification by repealing these burdensome provisions. I want to thank you for affording me the opportunity to be here today on behalf of NSPA, and I would be happy to answer any questions that you may have.

[The prepared statement follows:]

STATEMENT OF LOUIS MIRMAN, PAST PRESIDENT, NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

My name is Louis Mirman. I am a Past President of the National Society of Public Accountants and a Past President of the Accountants Society of Virginia. I have been in practice for 42 years and am enrolled to practice before the Internal Revenue Service. I am accredited by the Accreditation Council for Accountancy in both accountancy and taxation and am currently serving on the advisory group to the Commissioner of Internal Revenue.

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As accountants, and small business people ourselves, we feel that we are in a unique position to understand the problems of small businesses. We appreciate the opportunity to be here today to present our views on the provisions of the Tax Reform Act of 1984 that require "adequate contemporaneous records" for the business use of automobiles and other property. I believe the only group of people who have heard more complaints about these requirements than those of you who serve in Congress are those of us who serve as accountants.

One of the problems continually voiced by the Commissioner is noncompliance. We find that small business people have difficulty understanding the income tax rules, are burdened with unreasonable and onerous bookkeeping requirements, and are threatened with sanctions and penalties. Their frustrations don't "enhance compliance". They understandably become embittered antagonists of the IRS. Complying "under duress" over time erodes—if not completely destroys—a willingness to comply "voluntarily".

NSPA urges that Congress repeal the contemporaneous records requirement established in the Tax Reform Act of 1984.

We propose:

If a taxpayer establishes under the prior law, that the primary use of a vehicle is for business purposes then that taxpayer may claim that 70% of the use is for business purposes. If a taxpayer wants to claim greater than 70% then the taxpayer must establish that extra use based on adequate records. Should the use of the vehicles be for less than 50% then the taxpayer will be allowed a deduction as documented. The rule would apply to *all* taxpayers regardless of type of business, ownership of business, or position in the business.

COMPLIANCE V. NONCOMPLIANCE

In the Tax Reform Act of 1984 Congress amended Section 274(d) of the Code by adding one word "contemporaneous" and Section 6695 by adding a requirement that a return preparer advise a client of the recordkeeping requirement and that the taxpayer sign a statement that he or she complies. In November the Internal Revenue Service issued temporary and proposed regulations to interpret the legislative change. They were approximately 76 pages in length. On February 15, 1985 in response to taxpayer and congressional pressure the IRS issued another 57 pages of temporary and proposed regulations amending the previously issued temporary and proposed regulations.

Was it Congress' intention that laws be so complex that such a change of a few words require more than 100 pages of explanatory regulations?

We, as accountants and tax practitioners, are expected by our clients and the government to know and understand these regulations. We accept this. We are bothered however, by the fact that all taxpayers are also expected to understand the tax laws. If they don't understand and comply, they are potentially subject to negligence penalties. From the viewpoint of the public it appears that the penalties are more important to the IRS than the tax.

Your constituents have indicated that they are less than happy with these provisions. Many of them are our clients. They are telling us that they are increasingly confused, frustrated and annoyed with our revenue system and the IRS.

Confusion, frustration and annoyance encourage noncompliance. Most taxpayers will comply, but not without a cost to the government both in taxpayer resentment and reduced revenue from increased taxpayer compliance costs.

PAPERWORK

Small businesses are least able to understand these new requirements and to afford the costs of the added recordkeeping. These paper-generating provisions are interrupting normal business operations and are unlikely to result in an appreciable increase in tax revenue.

We question Treasury estimates of \$150 million in increased revenues in fiscal year 1985, as it is already illegal to deduct expenses for the personal use of such items as automobiles and computers. In addition, this revenue estimate must be balanced with what it will cost businesses to comply with and inquire about these requirements. A conservative estimate of \$500 a year for each of this nation's 14 million small businesses would result in a cost of close to \$7 billion a year to this segment of the business community alone.

Assuming an average 20% tax rate this \$7 billion cost could result in a revenue loss of \$1.4 billion. If the IRS estimate that enforcement of these regulations will result in an additional revenue collection of \$150 million dollars is correct, then the net cost to the government will be \$1.25 billion dollars.

PROPOSAL

We propose that Congress repeal the contemporaneous records requirements.

Further we propose that in lieu thereof Congress adopt the following:

If a taxpayer establishes that the primary use of the vehicle is for business purpose, it may be presumed that the business use is 70% and personal use 30%.

If the taxpayer wishes to claim that business use is greater than 70% it would be necessary to establish the greater percentage through required documentation.

If the business use of the vehicle is less than 50%, then the taxpayer will be allowed a deduction for the actual business usage, measured either by reasonable mileage allowance or actual expenses based on percentage of use.

CONCLUSION

In conclusion, we believe that if our country is to continue with a tax system based on voluntary compliance, laws must be passed that are simple and understandable. The laws that have been passed in the last eight years are overly complex. Taxpayers are intimidated and frustrated by these incomprehensible laws. As a result, they are frequently unable to comply with them and the regulations. Increasingly, this frustration is leading to a refusal to cooperate. This attitude undermines the entire premise of our tax system.

The contemporaneous recordkeeping provisions we have addressed today are an example of the unnecessarily complex requirements that are frustrating the taxpayer. Congress can take its first step towards simplification by repealing these burdensome provisions.

I want to thank you for affording me the opportunity to be here today on behalf of NSPA. I would be happy to answer any questions you may have.

Mr. RANGEL. Thank you, Mr. Mirman. Mr. Arthur Wolpert.

STATEMENT OF ARTHUR B. WOLPERT, PRESIDENT, AMERICAN AUTOMOTIVE LEASING ASSOCIATION

Mr. WOLPERT. Thank you, Mr. Chairman. My name is Arthur Wolpert, and I am president of the American Automotive Leasing Association, a national trade association whose members are engaged in long-term leasing of motor vehicles. We appreciate very much this opportunity to present our views at this hearing.

Our member companies of the association have over 1.5 million vehicles on lease. Our members lease these motor vehicles to both large and small businesses with fleets ranging from one to many thousands. Our lessee customers include a broad spectrum of businesses in this country.

The association urges Congress to repeal the requirement of section 179(b) of the 1984 Tax Reform Act, that adequate contemporaneous records be kept for business use of vehicles. An immediate problem for our customers and indeed for our members is the confusion and uncertainty that exists right now with respect to the business and personal use of company vehicles.

Three sets of long and complex temporary and proposed IRS regulations have been issued, the latest only 2 weeks ago. Each was effective immediately on publication; all have to be read together, and all are subject to further comment and hearing.

We are nearing the end of the first quarter of 1984 and many fundamental issues remain unresolved. For example, one very basic issue, which is apparently still open, is how to deal with the situation where employers would prefer to use the optional 70 percent business use presumption but their employees would prefer not to do so.

This presumption may have to be elected by the employer and the employee, then reported to each other, and then to the Govern-

ment. Numerous practical, legal, and accounting problems are created with respect to satisfaction of the withholding obligations of employers. It would be extremely difficult for small businessmen without access to extensive legal, accounting advice to determine which rule might be applicable to their business vehicles.

Many leasing companies, my own included, lease vehicles to companies for use by their middle managers who in turn use the vehicle on company business. The title or job description of such persons may dictate that they spend considerable time in the office even though they may also go on the road for business. A sole proprietor also falls into this category.

This manager or sole proprietor is still subject to the detailed recordkeeping requirements of the new proposed and temporary rules. The more often they use the vehicle on company business the more recording they have to do. No safe harbor or alternative to straight mileage is provided in such cases for this employee or sole proprietor. The option of a 70-percent business use presumption, which I will discuss later, is available only where the automobile is used during most of the normal day to make several business stops on the employer's business. This criterion cannot be met by owners and managers because of the many days or portions of days spent in their office or similar setting.

The proposed regulations offer an option of presuming 70-percent business use and 30-percent personal use in the case of a company whose drivers are on the road making several business stops in a normal business day. We believe, however, that this greatly overstates the amount of personal use that such fleets have actually experienced. Employees whose personal vehicle use falls into this category would either have to pay more tax than they owe or go back to the detailed logging of mileage required by the contemporaneous record provisions. Their employers who may wish to use the safe harbor in order to avoid having to base withholding or other charges on an actual and variable mileage would then be left with additional complications whose extent is still uncertain.

One must ask whether all of the additional complications for business use under the contemporaneous record-keeping requirements of 179(b) and the proposed regulations under that section really serve any useful purpose.

We assume that the rationale for requiring contemporaneous records is to encourage compliance and honest reporting of the taxable fringe benefit which results from the personal use of a company vehicle.

Studies of these fleets have shown that substantial compliance existed prior to the law. Many companies have been charging their sales and management employees for personal use of company automobiles in the vicinity of \$40 to \$60 per month. Often the monthly charges have been and are considerably higher.

In view of all of the foregoing, the contemporaneous recordkeeping requirements are burdensome, confusing, and unreasonable. The association urges the Congress to repeal section 179(b) of the Tax Reform Act of 1984. Thank you.

[The prepared statement follows:]

**STATEMENT OF ARTHUR B. WOLPERT, PRESIDENT, AMERICAN AUTOMOTIVE LEASING
ASSOCIATION**

My name is Arthur B. Wolpert, and I am President of the American Automotive Leasing Association, a national trade association whose members are engaged in the long-term leasing of motor vehicles. We appreciate very much the opportunity to present our views at this hearing.

The member companies of the Association have over one and a half million vehicles on lease. Our members lease motor vehicles to both large and small businesses with fleets ranging from one to many thousand vehicles. Our lessee-customers include the broad spectrum of businesses in this country: sales and service companies, utilities, banks, manufacturing companies, and every kind of small business that uses a motor vehicle in order to conduct its business.

The Association urges Congress to repeal the requirement of § 179(b) of the 1984 Tax Reform Act that "adequate contemporaneous records" be kept for business use of vehicles.

The use of the automobiles by our lessees' employees differs depending on the specific needs of the particular company, and, of course, on the particular company policy. Although the uses of the vehicles may differ, one thing has become clear, and that is that since these contemporaneous record keeping requirements were proposed by the Internal Revenue Service pursuant to § 170(b), our customers have been in an uproar over this wasteful and burdensome imposition on the conduct of their business.

An immediate problem for our customers and, indeed, for our members is the confusion and uncertainty which exist right now with respect to the business and personal use of company vehicles. Three sets of long and complex temporary and proposed IRS regulations have been issued, the latest only two weeks ago. Each was effective immediately on publication, all have to be read together, and all are still subject to further comment and hearing.

As we are nearing the end of the first quarter of 1984, many fundamental issues remain unresolved. For example, one very basic issue which is apparently still open is how to deal with the situation where employers would prefer to use the optional 70% business use presumption, now set forth in the most recent IRS proposed and temporary regulations, but their employees would prefer not to do so. This presumption may have to be elected by the employer and employee and then reported to each other and to the government. In addition, numerous practical, legal and accounting problems are created with respect to satisfaction of the withholding obligations of employers.

The proposed and temporary regulations—in particular the latest set which was intended specifically to ease the record keeping burdens—contain complicated and abstruse requirements for the various exemptions, exceptions, and exceptions to the exceptions. It would be extremely difficult for a small businessman without access to extensive legal and accounting advice to determine which rules might be applicable to his business vehicles. We respectfully suggest that it is not good tax policy to have so many complex, detailed and difficult rules for a matter as common and basic to all businesses as the use of motor vehicles.

In many common vehicle use situations, the proposed contemporaneous records rules impose very major and unreasonable burdens. This is so despite the most recent changes which have eliminated some of the unreasonable requirements.

Many leasing companies, including my own, lease vehicles to companies for use by their middle managers. The title and/or job description of such persons may dictate that they spend considerable time in the office, even though they may also go on the road on business. A sole proprietor would also fall into this category. This manager or sole proprietor is still subject to the detailed record keeping requirements of the new proposed and temporary rules. The more often they use the vehicle on company business the more recording they have to do. Each entry must include the date and the mileage driven or odometer readings before and after the use. The purpose of the use must also be entered on the contemporaneous record. An example of such purpose would be "to make a sales presentation to a customer." No safe harbor or other alternative to straight mileage is provided in such cases for the employee or sole proprietor. The option of a 70% business use presumption which I will discuss later is available only where the automobile is used during most of a normal day to make several business stops on the employer's business. This criterion cannot be met by many managers and owners because of their many days or portions of days spent in the office or similar setting.

The forced distraction from one's primary business concerns resulting from these constant mileage record keeping requirements is extremely intrusive. The more productive the person, the more wasteful is the requirement.

The proposed regulations offer an option of presuming 70% business use and 30% personal use in the case of the company fleet whose drivers are on the road making several business stops in a normal business day. We believe, however, that this greatly overstates the amount of personal use that such fleets have actually experienced.

Last month the National Association of Fleet Administrators (NAFA) published its annual survey of personal use of company fleet vehicles by employees. Of 307 U.S. commercial fleets responding, with a total of over 209,905 vehicles, no industry category reported anywhere near 30% personal use. Drug company fleets, for example, reported an average of 14% personal use among the different companies. This is less than half of the 30% presumption in the regulations. Employees whose personal use falls into this category would either have to pay more tax than they owe, or go back to the detail of logging mileage as required by the contemporaneous record provisions. Their employers who may wish to use the safe harbor in order to avoid having to base withholding or charges on an actual and variable mileage would then be left with additional complications, whose extent is still uncertain.

One must ask whether all the additional complications for business use under the "contemporaneous" record keeping requirements of § 179(b) and the proposed regulations under that section really serve any useful purpose. We assume that the rationale for requiring contemporaneous records is to encourage compliance and honest reporting of the taxable fringe benefit which results from the personal use of a company vehicle. Studies of these fleets have shown that substantial compliance existed under the law prior to § 179(b). Many companies have been charging their sales and management employees for personal use of company automobiles, in the \$40-\$60 per month vicinity. Often the monthly charges have been and are considerably higher.

In view of all the foregoing, the "contemporaneous" record keeping requirements are burdensome, confusing and unreasonable.

The Association urges the Congress to repeal § 179(b) of the Tax Reform Act of 1984.

Thank you.

Mr. RANGEL. Thank you. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. I want to thank the panel; with due regard to all the other panels here today I think at this point you are about the best we have had all day. You have raised some excellent questions, Mr. McCarthy, about reduction in the sale of automobiles and light vehicles.

All of you have raised questions that I think really need to be answered. I am just sorry that more members of the committee are not here. There is a session on the House floor and some other subcommittees are in operation at this time. But I do want to thank all of you very much for bearing with us and letting us have the benefit of your testimony. Thank you, Mr. Chairman.

Mr. RANGEL. I want to join with Mr. Duncan and assure you that your testimony will be reviewed by the members of the committee and I thank you for your patience as well as your contribution.

The last panel is Mr. Kliesmet, president of International Union of Police Associations; Al Connors, the treasurer of the National League of Cities and the International Association of Fire Chiefs; and the director of finance and revenue from the city of Washington, DC, Melvin Jones, representing the Government Finance Officers Association.

Mr. Kliesmet.

STATEMENT OF ROBERT B. KLIESMET, PRESIDENT, INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO, PRESIDENT OF THE INSTITUTE FOR POLICE RESEARCH

Mr. KLIESMET. Mr. Chairman, members of the Ways and Means Committee, I thank you for the opportunity to appear here today and to give testimony concerning recordkeeping for personal use of business vehicles.

My name is Robert Kliesmet. I am the president of the International Union of Police Associations, AFL-CIO. I have served as a police officer on the streets of Milwaukee for the past 29 years.

Our union represents some 17,000 law enforcement officers and has member locals in 29 States. We work closely with other associations in all areas of law enforcement, apprehension, prosecution, and research throughout the 50 States. One of those associations is the National Law Enforcement Council representing 300,000 law enforcement officers in 12 major national associations. And it is on their behalf I also make my comments.

During the 1970's, the United States experienced increasing crime rates that bordered on the unbelievable. The public, local, State, and Federal Government officials were duly alarmed over what appeared to be a breakdown in our society and the inability of law enforcement on all levels to cope with the problem. The Congress, sensing the need for their involvement in a situation that was national in scope, appropriated moneys to assist the States in the development of new techniques to meet the growing need. Time, effort, and study, with adequate financial support from Congress, enabled the States to meet the problem and successfully turn the tide. The States, counties, and municipalities have developed and put in place new advanced techniques and procedures that countered the growing incidence of street crimes. Our current reports show a continuing decrease in the numbers of those crimes.

One of the procedures or programs that grew out of these studies, a procedure or program that contributed greatly to the decreasing incidents of street crime is the Personal Patrol Car Program. This is a program that requires law enforcement officers to take home their marked vehicles and encourages the use of such vehicles throughout their off-duty hours.

This program was not developed, nor was it implemented to serve as a bonus, or salary supplement to law enforcement personnel by their bargaining agents. It was developed solely by Government.

The use of marked police vehicles by off-duty police officers has had wide acceptance and use by law enforcement authorities across the country as a major law enforcement tool.

Let me outline and examine the primary objectives of this program, a program that arose and was implemented as a result of studies and programmatic testing funded by the Congress of the United States and through the Justice Department. I will not allude to those objectives in my oral statement; however, they are included in my written statement.

All of the studies indicate that these objectives have been met in the implementation of this program. The greater visibility of police vehicles in neighborhood driveways, in shopping centers, and oper-

ating within the peak traffic pattern as the patrol officer drives to his or her assigned patrol area, have had an obviously beneficial effect for law enforcement. The sense of the security of the citizenry is clearly enhanced. The unlawful element faces the hazard that they cannot project the periodic presence of a scheduled patrol vehicle. Instead, they face the added risk of an immediate response by an off-duty patrol officer. The State, county, and municipalities benefit by a considerable increase in the number of patrol hours without the added expense of increasing manpower.

One of the studies of the effectiveness of this program was conducted in a nearby jurisdiction, Prince George's County, MD. The results may interest the committee. Prince George's County was selected as it was the exemplar of the problem encountered across the country. This county had a 100-percent increase in population in a relatively short period. It was changing from a rural to an urban area, and its crime rate and demands for police services were compounding yearly. The off-duty use of marked police vehicles was one of the major programs instituted to meet the exigency. Patrol officers were instructed to drive their marked cars to and from work, and were authorized to use the vehicles for their personal activities while in an off-duty status. They were instructed to maintain radio contact and to respond to emergencies in their immediate area while off duty.

The law enforcement authority was to bear the cost of purchasing and maintaining the vehicles. The purpose was to give the patrol officer omnipresence. All ranks of patrol officers were assigned vehicles. It, at all times, has been emphasized that this use of an official vehicle was not intended as an automatic fringe benefit or an employment right. It is an operational privilege subject to revocation at any time.

In order to produce the desired effect of crime containment, certain restrictions were placed upon the off-duty officers. Again, I will not allude to these in my oral statement. They are in the written statement.

These are just a few of the restraints and restrictions that were placed upon the patrol officers' participation in the program. They clearly indicate the law enforcement purposes of the program and the minimal aspect of any fringe benefit to the police officer. We contend that the Internal Revenue Service should not be allowed to turn apples into oranges by executive fiat.

The program was found to have universal acceptance by patrol officers and the public. It has been a very effective program and this Congress should assure its continuance.

I could continue to list the benefits of this program; however, the members of this committee need go no further than to check with the law enforcement agency in their congressional district as to its effectiveness.

I thank you, Mr. Chairman, and stand ready to answer any questions.

[The prepared statement follows:]

STATEMENT OF ROBERT B. KLIESMET, PRESIDENT, INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL-CIO

Mr. Chairman, Members of the Way and Means Committee, I thank you for the opportunity to appear here today and to give testimony concerning recordkeeping and fringe benefits.

My name is Robert B. Kliesmet. I am the President of the International Union of Police Associations, AFL-CIO. I am also President of the Institute for Police Research. I have been a guest lecturer at Harvard University's Kennedy School of Government, the University of Milwaukee School of Social Welfare, the University of Wisconsin Law School, Marquette University, Melbourne University Law School, the F.B.I Academy, and at numerous seminars, symposiums and workshops. I have contributed to numerous publications concerned with policing and law enforcement. I have also served as a police officer on the streets of Milwaukee. Our Union represents some 17,000 law enforcement officers and has membership locals in 29 states. We work closely with other associations in all areas of law enforcement, apprehension, prosecution and research throughout the 50 states.

During the 1970's the United States experienced increasing crime rates that bordered on the unbelievable. As early as 1973, the Federal Bureau of Investigation crime reports indicated on burglaries alone, a range from 2,000 in a smaller city like Lexington, Kentucky, to 149,000 in New York City. The public, local, state and federal government officials were duly alarmed over what appeared to be a breakdown in our society and the inability of law enforcement on all levels to cope with the problem. The Congress sensing the need for their involvement in a situation that was national in scope, appropriated moneys to assist the states in the development of new techniques to meet the growing problem. Time, effort, and study, with adequate financial support from Congress, enabled the states to meet the problem and successfully turn the tide. The states, counties and municipalities have developed and put in place new advanced techniques and procedures that countered the growing incidence of street crimes. Our current reports show a continuing decrease in the number of those crimes.

One of the procedures or programs that grew out of these studies, a procedure or program that contributed greatly to the decreasing incidents of street crime is the Personal Patrol Car Program. This is a program that requires law enforcement officers to take home their marked police vehicles and encourages the use of such vehicles throughout their off-duty hours.

This program was not developed, nor was it implemented to serve as a bonus, or salary supplement to law enforcement personnel.

The use of marked police vehicles by off-duty patrol officers has had wide acceptance and use by law enforcement authorities across the country as a major law enforcement tool. Let me outline and examine the primary objectives of this program, a program that arose and was implemented as a result of studies and programmatic testing funded by the Congress of the United States and through the Department of Justice. These objectives were:

1. To promote the security of the citizens by a greater visibility of police resulting from an increased number of police vehicles on the streets of the county or municipality.
2. To improve police-community relations by increasing on and off-duty personal contracts and services performed by the police.
3. To deter crime by limiting the opportunity of the criminal to commit the act by the presence of more police vehicles.
4. To provide quicker response time to all types of calls and thereby increase the opportunity for apprehending the criminal.
5. To reduce the maintenance costs of police vehicles.
6. To provide quicker response of off-duty personnel when they are called back to duty because of an emergency.
7. To increase incentive and improve morale of those officers in the program.
8. To increase the visibility of marked police vehicles thereby decreasing the number of traffic violations and increase traffic safety enforcement.

All of our studies indicate that these objectives have been met in the implementing of this program. The greater visibility of police vehicles in neighborhood drive-ways, in shopping centers, and operating within the peak traffic pattern as the patrol officer drives to his assigned patrol area, have an obviously beneficial effect for law enforcement. The sense of security of the citizenry is clearly enhanced. The unlawful element faces the hazard that they cannot project the periodic presence of a scheduled patrol vehicle, instead they face the added risk of an immediate response by an off-duty patrol officer. Law enforcement dispatchers have an increased

availability of patrol officers strategically placed within their jurisdiction. Police officers assigned their own vehicle take a natural pride in its maintenance and efficiency. Our studies indicate patrol officers in the take home vehicle program have significantly less police vehicle accidents than officers utilizing fleet police vehicles. The state, county, and municipalities further benefit by a considerable increase in the number of patrol hours without the added expense of increasing manpower.

One of the studies of the effectiveness of this program was conducted in a nearby jurisdiction, Prince Georges County, Maryland. The results may interest the Committee. Prince Georges County was selected as it was exemplar of the problem encountered across the country. This county had a 100% increase in population in a relatively short period. It was changing from a rural to an urban area, and its crime rate and demands for police services were compounding yearly. The off-duty use of marked police vehicles was one of the major programs instituted to meet the exigency. Patrol officers were instructed to drive their marked patrol cars to and from work and were authorized to utilize the vehicles for their personal activities while in an off-duty status. They were instructed to maintain radio contact and to respond to emergencies in their immediate areas while off-duty. The law enforcement authority was to bear the cost of purchasing, maintaining, and operating the vehicles with the maintenance responsibility placed on the officer to whom the vehicle is assigned. The purpose was to give the patrol officer omnipresence. All ranks of patrol officers were assigned vehicles. It, at all times, has been emphasized that this use of an official vehicle was not intended as an automatic fringe benefit or an employment right. It is an operational privilege subject to revocation at any time.

In order to produce the desired effect of crime containment, certain restrictions are placed upon the off-duty patrol officer. He must reside within the jurisdictional limits of the law enforcement agency. No more than two police vehicles may be parked at any one location except on official business. Two or more police officers attending the same school or meeting out of the jurisdiction will utilize the minimum number of vehicles. Officers on light duty, restricted, or under suspension will not operate off-duty department vehicles. Police equipment will not be left in police vehicles while unattended. Vehicles cannot be used by off-duty officers or their passengers who intend or have consumed alcoholic beverages. The vehicles cannot be used for extended vacations, but must be returned to the car pool. The vehicles cannot be used with excessive loads or objects extending out of windows. The vehicle must not be used in any manner, nor will the patrol officer dress in a fashion that would reflect adversely on the service. Radio contact will be maintained at all times while the vehicle is in operation. In responding to a felony call, the officer must deposit any civilian passenger.

These are just some of the restraints and restrictions placed upon the patrol officer participants in these programs. They clearly indicate the law enforcement purposes of the program and the minimal aspect of any fringe benefit to the police officer. We contend that the Internal Revenue Service should not be allowed to turn apples into oranges by executive fiat.

Let us look at the experience of Prince Georges County. As early as 1972, the officers assigned to this program handled, stood by or assisted in 13,239 calls or incidents resulting in 119 felony arrests, 363 misdemeanor arrests and 1,049 traffic accidents. These broke down into 7,355 on-view responses and 5,424 radio monitor responses with off-duty officers arriving on the scene within 2-3 minutes in 4,547 of the incidents. The program was found to have had universal acceptance by the patrol officers and the public. Major off-duty use was in shopping, thus placing the vehicle in areas where most hold-ups, larcenies, auto thefts and assaults occur. Surveys indicated that driving to and from work placed the marked police vehicle on the road during peak traffic hours with obvious benefits. The crime reduction aspects of this program require little amplification. It has been a very effective program and this Congress should assure its continuance. I could continue to list the benefits of this program, however the members of this Committee need go no further than to check with the law enforcement agencies in their own congressional districts as to the effectiveness of the program.

If the Internal Revenue Service is allowed to consider this program as a taxable benefit to the patrol officers involved, they will not only severely damage its effectiveness but may in many instances, destroy the program entirely. In reality, they would reduce the take-home pay of patrol officers involved in the program by allocating to them income they do not receive for the performance of a mandated public function. The citizenry can only be adversely affected and the states, counties, and municipalities penalized by being forced to pay for a service previously rendered at minimal cost to them. I shall not extend my statement to cover the administrative costs involved, the insurance ramifications, recordkeeping, and labor contract nego-

tations as other members of this panel will adequately raise these contentious issues.

I can only request that you Mr. Chairman, and members of this committee assure the law enforcement community and the citizenry of this country that an excellent and effective law enforcement program will not be destroyed in a misbeguiled effort to seek out a minimal tax advantage.

Mr. RANGEL. Thank you, Mr. Kliesmet.

Mr. Connors.

STATEMENT OF ALBERT W. CONNERS, TREASURER, INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, AND ON BEHALF OF THE NATIONAL LEAGUE OF CITIES

Mr. CONNERS. Good afternoon.

I am Chief Albert W. Connors, treasurer of the International Association of Fire Chiefs. Our organization represents 8,200 career and volunteer fire chiefs who are responsible for managing fire protection, emergency medical services, airport crash-fire-rescue services, hazardous materials, and all those other responses to disasters of all types in the communities of our Nation.

I am also the fire chief and emergency preparedness coordinator for the city of Farmington, NM. I am familiar with both paid and volunteer fire departments.

I am here to point out to you the many and serious concerns of our Nation's fire chiefs to the recently announced IRS regulations regarding the taxation of employer-provided vehicles and the inherent recordkeeping tasks associated with those new rules.

Local government cannot afford to maintain an around-the-clock on-duty force to handle all the emergencies it will encounter. Fire chiefs and other senior fire officers are therefore furnished with employer-provided vehicles so that they can be on call 24 hours a day and be instantly available to respond to emergencies in their communities. These vehicles are equipped with mobile radios that allow these off-duty personnel to respond immediately from their homes and communicate with other responding units as soon as they are called into service.

The availability of these on-call personnel is the only reasonable and inexpensive approach to providing additional response capabilities during multiple alarms and other major emergencies that reach beyond the regularly maintained and minimal level of public protection which cities presently struggle to provide.

These employer-provided vehicles are a most necessary and important element of both public safety and essential services in our communities. I can assure you that these vehicles are easily identified and not a perk available for a trip to a local tavern to watch football on a big screen TV. It is not necessary for the Internal Revenue Service to apply fringe benefit income penalties and onerous recordkeeping requirements on these types of vehicles in an effort to control abuse. The general public serves as a very effective watchdog in preventing any such abuses at the local level.

Fire service agencies are not the only personnel affected by these regulations, however.

Consider the need for on-call utility crews to respond quickly to cut natural gas or electrical services at emergency scenes. Delays from these people can lengthen utility company response and in-

crease the amount of time that firefighters must work with live power and gas lines during their already dangerous activities. Reduced firefighter safety is likely to result, as well as unnecessary and prolonged public inconvenience.

Police, public works, civil defense, and a host of other essential agencies are also affected by these regulations. Each impacts on the public safety.

Applying these new IRS regulations to public sector employer-provided vehicles may very well reduce the number and availability of people willing to serve in these key on-call situations. In an effort to avoid the income penalty, many personnel have already indicated a preference to turn in their vehicles and not be on call. Such actions may well result in a reduction of public safety services during nights, weekends, and holidays.

Those public safety personnel who do continue such on-call status are certain to require or negotiate additional wages and salaries from their employers to meet the increased taxes they will pay under the regulations. These new IRS regulations then become nothing more than a passthrough tax, further increasing the cost of local government to its constituents.

The detailed bookkeeping required by the regulations also impacts negatively on these personnel. I find it hard to believe that off-duty emergency personnel would delay their response when called to a 3 a.m. emergency so that they might complete their IRS log.

Incidentally, Mr. Chairman, I responded to a fire bombing just 2 years ago at our local Internal Revenue Service office. And I can assure you I did not stop to fill out my log.

As we look to the future, we have to wonder if the next IRS regulations to be announced might not require volunteer firefighters to keep such contemporaneous recordkeeping so that they can continue to maintain presently allowed mileage deductions for their personal vehicles.

Public safety officials, essential service personnel, and volunteers must be provided immediate and future relief from these regulations.

The International Association of Fire Chiefs considers the new regulations to be poorly promulgated, ill-advised and extremely demotivating to those dedicated people responsible for providing public safety and essential services in the communities of our Nation.

We strongly recommend that the regulations be modified immediately to exempt public entities and related essential service agencies from both the income penalties and bookkeeping requirements, and we alert the House of Representatives to the severe negative impact that will result if these regulations remain in effect.

[The prepared statement follows:]

STATEMENT OF CHIEF ALBERT W. CONNERS, TREASURER FOR THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS [IAFC]

I am Chief Albert W. Connors, Treasurer of the International Association of Fire Chiefs (IAFC). Our organization represents 8,200 career and volunteer fire chiefs who are responsible for managing fire protection services, emergency medical services, airport crash-fire-rescue services, hazardous material control and those other

emergency responses to disasters of all types in the communities throughout our nation.

I am also the Fire Chief and Emergency Preparedness Coordinator for the City of Farmington, New Mexico. I am familiar with both paid and volunteer fire departments.

I am here to point out to you the many and serious concerns of our nation's fire chiefs to the recently announced IRS regulations regarding the taxation of "employer-provided" vehicles and the inherent recordkeeping tasks associated with those new rules.

Local government cannot afford to maintain an "around-the-clock" on-duty force to handle all the emergencies it will encounter. Fire Chiefs and other senior fire department commanders are, therefore, often furnished with "employer-provided" vehicles so that they can be on-call 24 hours a day and be instantly available to respond to emergencies in their communities. These vehicles are equipped with mobile radios that allow off-duty personnel to respond immediately from their homes and communicate with other responding units as soon as they are called into service.

The availability of these on-call personnel is the only reasonable and inexpensive approach to providing additional response capabilities during multiple alarms and other major emergencies that reach beyond the regularly maintained and minimal level of public protection which cities presently struggle to provide.

These "employer-provided" vehicles are a most necessary and important element of both public safety and essential services in our communities. I can assure you that these vehicles are easily identified and not a "perk" available for a trip to a local tavern to watch football on a big-screen t.v. It is not necessary for the Internal Revenue Service to apply fringe benefit income penalties and onerous recordkeeping requirements on these types of vehicles in an effort to control abuse. The general public serves as a very effective watchdog in preventing any such abuses at the local level.

Fire service agencies are not the only personnel affected by these regulations, however.

Consider the need for on-call utility crews to respond quickly to cut natural gas or electrical services at emergency scenes—delays from these people can lengthen utility company response and increase the amount of time that firefighters must work with live power and gas lines during their already dangerous activities. Reduced firefighter safety is likely to result, as well as unnecessary and prolonged public inconvenience.

Police, public works, civil defense and a host of other essential agencies are also affected by these regulations. Each impacts on the public safety.

Applying these new IRS regulations to public sector "employer-provided" vehicles may very well reduce the number and availability of people willing to serve in these key on-call situations. In an effort to avoid the income penalty many personnel have already indicated a preference to turn in their vehicles and not be on-call. Such actions could well result in a reduction of public safety services during nights, weekends, and holidays.

Those public safety personnel who do continue such on-call status are certain to require or negotiate additional wages and salaries from their employers to meet the increased taxes they will pay under the regulations. These new IRS regulations then become nothing more than a "pass-through tax", further increasing the cost of local government to its constituents.

The detailed bookkeeping required by the regulations also impacts negatively on these personnel. I find it hard to believe that off-duty emergency personnel would delay their response when called to a 3:00 a.m. emergency so that they might complete their IRS vehicle log.

As we look to the future, we have to wonder if the next IRS regulations to be announced might not require volunteer firefighters to keep such contemporaneous recordkeeping so that they can continue to maintain presently allowed mileage deductions for their personal vehicles.

Public safety officials, essential service personnel, and volunteers must be provided immediate and future relief from these regulations.

The International Association of Fire Chiefs considers the new regulations to be poorly promulgated, ill-advised and extremely demotivating to those dedicated people responsible for providing public safety and essential services in the communities throughout our nation.

We recommend strongly that the regulations be modified immediately to exempt public entities and related essential service agencies from both the income penalties

and bookkeeping requirements and we alert the House of Representatives to the severe negative impact that will result if these regulations remain in effect.

Mr. RANGEL. Thank you, Chief.

Melvin Jones, director of finance and revenue, Washington, DC.

STATEMENT OF MELVIN W. JONES, DIRECTOR OF FINANCE AND REVENUE, DISTRICT OF COLUMBIA, ON BEHALF OF THE GOVERNMENT FINANCE OFFICERS ASSOCIATION

Mr. JONES. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Melvin W. Jones, the director of finance for the District of Columbia. I am testifying on behalf of the Government Finance Officers Association as a member of its executive board. The association represents more than 9,000 finance officers from municipal, county, and State governments, as well as from school districts, special districts, and public retirement systems.

I have a more detailed statement I ask to have entered into the record, Mr. Chairman. But, due to the lateness of the hour, and in the name of brevity, I will make a condensed statement.

Mr. RANGEL. Without objection.

Mr. JONES. We appreciate this opportunity to present the views of State and local government finance officers on the recordkeeping requirements that must be adhered to in determining the taxation on employer-provided vehicles. It is our view that both the law and the IRS regulations ignore the unique responsibilities of State and local government and burden them with overly restrictive and costly rules.

In response to comments made about the October 1984 and January 1985 regulations, the Treasury Department reissued temporary regulations on February 20 that relaxed the recordkeeping requirements but do not provide a remedy. These regulations we feel adversely affect State and local governments because of five primary reasons.

First, Mr. Chairman, public safety and service personnel who take vehicles home to meet 24-hour emergencies will be required to pay additional taxes. These employees are required to take vehicles home in order to respond quickly when emergencies and other public needs arise. For example, police in many jurisdictions are required to drive their vehicles home after their shift because most experts agree that visibility is a key part of any crime prevention program, and the officer must be able to respond to emergencies around the clock. Additionally, Mr. Chairman, this practice eliminates the need for and reduces the cost of providing secured parking facilities for vehicles not in use.

I have attached, Mr. Chairman, examples from around the country of administrative problems these regulations will cause.

Second, personnel costs will automatically increase because the value of the personal use is added to the compensation level of affected employees. State and local governments will incur higher employment taxes, pension costs, and other benefit costs that are tied to compensation. Private sector employers will be able to offset these additional costs by reducing their tax liability because a percentage of these costs are deductible business expenses.

Third, legal conflicts will arise where State or local statutes or union negotiated contracts set salary levels. Compensation levels are automatically raised by the value of the personal use of an employer-provided automobile, without consideration of legal salary restrictions or contractual agreements.

Fourth, the purchase of public vehicles is not tax-motivated because governments are tax-exempt entities. Governments do not use depreciation or investment tax credits to reduce their tax liability. The need for corrective measures to circumvent abuses is therefore misdirected and unnecessary.

Finally, Mr. Chairman, these regulations have a significant fiscal impact on State and local governments that should be analyzed by the Congressional Budget Office. Public Law 97-108, the State and Local Government Cost Estimate Act of 1981, requires the CBO compile a fiscal analysis for pending legislation reported out of congressional committees that imposes increased costs of \$200 million or more on State and local governments. The GFOA believes these regulations will meet this level in the aggregate.

State and local governments should be exempted from the IRS regulations because of the costly method of record maintenance required by the regulations, the increased employment tax payments and the inclusion of public safety and service vehicles under the regulations. These increases costs have not been budgeted and put considerable financial pressure on States and localities at a time when they are facing major cuts in Federal aid. State and local governments are left with the choice of either absorbing the increased costs imposed by the regulations or cutting services.

It is for these reasons we support H.R. 773, Mr. Anthony's bill that would exclude law enforcement, fire protection and emergency medical vehicles from the taxation requirements. The GFOA policy, which we have attached, goes further by calling for an exemption for public employees responsible for the public's safety and welfare.

Mr. Chairman, thank you for this opportunity to express the concerns of the Government Finance Officers Association.

[The prepared statement and attachments follow:]

STATEMENT OF MELVIN W. JONES, DIRECTOR OF FINANCE AND REVENUE, DISTRICT OF COLUMBIA, REPRESENTING GOVERNMENT FINANCE OFFICERS ASSOCIATION

Mr. Chairman and Members of the Committee, I am Melvin W. Jones, Director of Finance and Revenue for the District of Columbia. I am testifying on behalf of the Government Finance Officers Association (GFOA) as a member of its Executive Board. The association represents more than 9,000 finance officers from municipal, county, and state governments, as well as, from school districts, special districts, and public retirement systems.

We appreciate this opportunity to present the views of state and local government finance officers on the recordkeeping requirements that must be adhered to in determining the taxation on employer-provided vehicles. It is our view that both the law and the IRS regulations ignore the unique responsibilities of state and local government and burden them with overly restrictive and costly rules.

The controversy over the recordkeeping requirements is not a recent development. Congress, in 1975, first directed the U.S. Treasury to issue regulations to govern the taxation of nonstatutory fringe benefits (those benefits that do not enjoy a statutory exclusion from taxation in the Internal Revenue Code). The regulations drew wide criticism and were withdrawn. Congress' reaction was to enact a moratorium on the issuance of regulations until a study of the issue could be completed.

This moratorium was extended repeatedly and finally expired on December 31, 1983.

On October 24, 1984, the Internal Revenue Service released the first of a two-part set of temporary regulations concerning the taxation of non-cash fringe benefits. Part one sets out recordkeeping requirements when employer-provided equipment is used for personal purposes. Part two provides guidance for withholding of income and employment taxes. The first set of regulations is basically of interest to the private sector as state and local governments, being tax-exempt entities, do not utilize accelerated depreciation or investment tax credits. However, the recordkeeping requirements apply to state and local governments in that they must verify personal use for withholding purposes as stipulated in the second set of regulations issued on January 7, 1985. These regulations clearly state that the value of personal use is subject to social security, employment and income taxes.

Both sets of regulations have met with resistance from the private and public sectors. The major objections raised by state and local governments are the onerous and costly method of record maintenance proposed by the regulations and the inclusion of public safety and service vehicles under the regulations. In response to these comments, the Treasury Department withdrew the regulations and issued temporary regulations on February 20, 1985 that relax the recordkeeping requirements, but do not provide a remedy. These regulations adversely affect states and localities because:

Public safety and service personnel who take vehicles home to meet 24-hour emergencies will be required to pay additional taxes. These employees are required to take vehicles home in order to respond quickly when emergencies and other public needs arise. For example, police in many jurisdictions are required to drive their vehicles home after their shift, because most experts agree that "visibility" is a key part of any crime prevention program and the officer must be able to respond to emergencies around-the-clock. Additionally, this practice eliminates the need and reduces the cost of providing secured parking facilities for vehicles not in use. Attached are examples from across the country of administrative problems these regulations cause.

Personnel costs will automatically increase because the value of the personal use is added to the compensation level of affected employees. State and local governments will incur higher employment taxes, pension costs, and other benefit costs that are tied to compensation. Private sector employers will be able to offset these additional costs by reducing their tax liability because a percentage of these costs are deductible business expenses.

Legal conflicts will arise where state or local statutes or union-negotiated contracts set salary levels. Compensation levels are automatically raised by the value of the personal use of an employer-provided automobile, without consideration of legal salary restrictions or contractual agreements.

The purchase of public vehicle is not "tax-motivated," because governments are tax-exempt entities. Governments do not use depreciation or investment tax credits to reduce their tax liability. The need for corrective measures to circumvent abuses is therefore misdirected and unnecessary.

These regulations have a significant fiscal impact on state and local governments that should be analyzed by the Congressional Budget Office (CBO). P.L. 97-108 (the "State and Local Government Cost Estimate Act of 1981") requires the CBO to compile a fiscal analysis for pending legislation reported out of congressional committee that imposes increased costs of \$200 million or more on state and local governments. The GFOA believes these regulations will meet this level in the aggregate.

State and local governments should be exempted from the IRS regulations because of the costly method of record maintenance required by the regulations, the increased employment tax payments and the inclusion of public safety and service vehicles under the regulations. These increased costs have not been budgeted and put considerable financial pressure on states and localities at a time when they are facing major cuts in federal aid. State and local governments are left with the choice of either absorbing the increased costs imposed by the regulations or cutting services.

It is for these reasons we support H.R. 773, Mr. Anthony's (D-Ark.) bill that would exclude law enforcement, fire protection, and emergency medical vehicles from the taxation requirements. The GFOA policy (which is attached) goes further by calling for an exemption for public employees responsible for the public's safety and welfare.

Mr. Chairman thank you for this opportunity to express our concerns. I am available to answer your questions.

**GOVERNMENT FINANCE OFFICERS ASSOCIATION POLICY STATEMENT—TAX REGULATIONS
ON EMPLOYER-PROVIDED VEHICLES**

The Government Finance Officers Association believes that state and local governments should not be subject to the Internal Revenue Service regulations that require that the value of an employer-provided vehicle be included in the compensation of their employees. These regulations create onerous and costly administrative recordkeeping requirements, as well as mandate increased employment taxes and pension and benefit costs for state and local governments without regard to the unique nature of governmental responsibilities. The regulations ignore the following:

In many jurisdictions it is necessary for government officials, safety officers, and public service employees to be on-call twenty-four hours a day. A take-home vehicle allows these individuals to respond immediately to emergency situations. Additionally, police officers are required or encouraged to use marked vehicles on off/duty hours as a crime prevention technique.

Most state and local government salaries are set by statute or union-negotiated contract. Charging an employee with the personal use of an employer-provided automobile has the effect of raising compensation without considering legal restrictions or contractual agreements.

A major difference in employment taxes between the private and public sectors is that these taxes are a deductible expense for businesses, but not for state or local government. Therefore, the 85 percent of state and local government that participate in social security must pay the total cost of the increase in employment taxes unlike the private sector that can reduce their liability through tax deductions. Moreover, pension, life insurance premiums and other employment benefits that are calculated as a percentage of salary will be increased.

Many jurisdictions require employees to commute in government vehicles for the convenience of the employer and limit the use of such vehicles to official purposes. This arrangement eliminates the costs of providing a secured parking area and allows for efficient dispatch of field representatives to site locations.

State and local government decisions on the purchase and use of employer-provided automobiles are not "tax-motivated" as they are in the private sector. Therefore, there is no opportunity for abuse and no need for corrective action.

The GFOA therefore concludes that state and local governments must be exempted from these overly restrictive regulations.

(Adopted: Government Finance Officers Association Executive Board, February 16, 1985.)

CITY OF MOBILE,
Mobile, AL, February 14, 1985.

Mr. ROSCOE L. EGGER, Jr.,
*Commissioner, Internal Revenue Service,
Washington, DC.*

DEAR COMMISSIONER EGGER: Let me bring to your attention a matter of great and immediate concern to my city, a concern clearly shared by other governmental jurisdictions across the country.

Recently the Internal Revenue Service published two sets of rules, one governing tax deductions for the use of personal vehicles for business purposes and the other setting forth record keeping and tax withholding requirements for employers whose employees make personal use of company vehicles. (Reference Federal Register Doc. 85-292.293).

You have doubtless heard much about the first set of rules, but probably not as much about the latter, or their practical impact on Mobile, which I serve both as Mayor and as Commissioner of Public Works.

As a taxpayer, I applaud the intent of your efforts to strengthen adherence to our tax laws regarding fringe benefits. As a public official, I find unfair and unjust the indiscriminate application of your rules to public service and public safety employees who, as a matter of municipal policy, take home specially equipped vehicles after work so that they can be in a position to respond more quickly to any emergency or other situation demanding immediate attention. The so-called personal use of municipal vehicles in most cases is an added responsibility, not a fringe benefit.

The American Public Works Association, which I serve by chairing its Committee on Intergovernmental Relations, has worked with the National League of Cities and other local governmental associations to produce the enclosed fact sheet. An informal working group will be bolstering this statement. I cannot believe that the Con-

gress or your agency intended the consequences to cities and their public service and public safety employees that result from sections 61 and 132 of your rules.

I respectfully urge your immediate attention to this matter, and await your reply. For further information regarding the impact of your rules on our communities and public agencies, I refer you to Mr. Charles Byrley, Director of APWA's Washington Office at 202/393-2792.

Thank you for your attention.

Yours sincerely,

LAMBERT C. MIMS.

Mayor and Public Works Commissioner.

Enclosure.

PORTLAND WATER DISTRICT,
Portland, ME, January 18, 1984.

Ms. CATHIE G. EITELBERG,
*Senior Legislative Associate,
Government Finance Officers Association, Washington, DC.*

DEAR Ms. EITELBERG: I sincerely thank you for sending to me the IRS regulations of January 7, 1985. I am enclosing herewith a publication by the Associated General Contractors which interprets those proposed regulations and makes some interesting comments. I thought this might be helpful to you.

Our concerns are similar to those of the AGC. It is wasteful, unnecessary, and burdensome to require that a log of use be kept on any vehicle which is never used for commuting and is, in fact, domiciled every night at the business location. For example, a meter service man's van is always parked at the shop at night and the daily log of mileage would be repetitive throughout the year: "Meter and Customer Service calls." Multiply this example by thousands and the wasted time and cost throughout the country will be enormous. It only seems reasonable that the IRS should be interested that logs be kept only for those vehicles which are used in commuting.

The second major objection to the regulations are as follows: It is essential to the proper maintenance of the life-supporting water and wastewater systems in the ten municipalities of Greater Portland that we serve that a qualified employee always be available to respond immediately to emergency calls during non-business hours. Such employees are usually assigned for one week out of 4, 5, or 6, and during his on-call week, he literally lives with his radio-equipped vehicle nearby to afford prompt response at any time. To charge that employee for the mileage in commuting that week to and from his residence or to include such value in his earnings on which he would pay added payroll taxes is ridiculous and increases the pressure and tension in employee/management relations, even though it is understood that such is required by the IRS.

I would hope that GFOA can put together some comments which the IRS is asking for by March 8, 1985.

Cordially,

RICHARD G. SMALL, *Treasurer.*

YOUR SEATTLE DEPARTMENT OF ADMINISTRATIVE SERVICES,
Seattle, WA, February 20, 1985.

Ms. LAURIE MICCICHE,
*National League of Cities,
Washington, DC.*

DEAR Ms. MICCICHE: I am happy to provide you with materials on the City of Seattle's take home vehicle policy for your use in testimony before the House Ways and Means Committee. We believe that your effort to secure an exemption from these new IRS rules for municipal governmental bodies is in the public interest.

The City of Seattle does not allow overnight use of vehicles for the purpose of employee compensation. Such use is allowed only to enable certain employees to respond to emergencies or when the cost to the City of providing a service is reduced by allowing an employee the overnight use of a vehicle. Except for commuting no personal use of such a City car is allowed.

The City Council has directed that the Department of Administrative Services establish a threshold level of response to emergency and/or nonemergency call-outs after regular hours. Employees in positions which do not meet this threshold level cannot be assigned cars for continuous overnight use. Vehicle usage records of employees assigned take-home cars must be reviewed annually to be sure that the

threshold levels are being met, and a new request for authorization must then be made by the appropriate department head. These requests are reviewed by the Director of Administrative Services as well as by staff from the Mayor's Office of Management and Budget. The requests must then be approved each year by the City Council.

In 1985, authorization to use overnight vehicles has been requested for 106 positions. They include Police and Fire Department personnel and utility employees who must respond to electrical, water and traffic emergencies. It is the City's policy and intent that these vehicles are provided solely to enable these employees to conduct City business in the most efficient possible manner. The use of these vehicles by employees to commute to work in an unavoidable by-product of this policy. We do not believe that more detailed recordkeeping by these employees is necessary to serve the public interest. Nor do we believe that the use of such vehicles should be considered as employee compensation.

I hope that the accompanying documents are helpful to you in your presentation.

Sincerely,

GEORGE PERNSTEINER, *Director.*

Mr. RANGEL. Mr. Duncan.

Mr. DUNCAN. I have no particular questions other than to thank the panel. I think I understand the unique problem you face, and I am hopeful we will be able to do something for you.

Thank you, Mr. Chairman.

Mr. RANGEL. Mr. Stark.

Mr. STARK. Nothing, Mr. Chairman, except to thank the panelists, and wonder where that coward Pearlman went. He is the cause of the suffering of all these poor people. He was here this morning when we started and he did not want to stick around to the end.

I heard very clearly the pleadings of the gentlemen of this panel, and I truly hope we can do something to help them with the regulations.

Thank you.

Mr. RANGEL. I thank the panelists for their patience. Clearly the committee members have indicated their sympathetic understanding of the plight that has been created, and I think all of you can rest assured that adjustments will be made. Thank you for your contribution and in assisting us in doing just that.

The committee stands adjourned, subject to the call of the Chair.

[Whereupon, at 4:48 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, DC, March 8, 1985.

HON. DAN ROSTENKOWSKI,

Chairman, House Ways and Means Committee, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Chief Counsel for Advocacy of the Small Business Administration is authorized by P.L. 94-305 (15 USC 634) to represent the views of small business before agencies of the Federal government and before the Congress. In that capacity, I am submitting this letter on the "adequate and contemporaneous record" provision of the 1984 Deficit Reduction Act. I am pleased that the Ways and Means Committee is responding to the business community's growing concern about the implementation of the "auto log" requirement by the Internal Revenue Service.

The IRS has responded to the public outcry over the new recordkeeping requirements for business vehicles by substantially revising the original regulation. The new version is an improvement over its predecessor. However, I do not believe it is sufficient improvement. Among the many small business groups that I work with, the IRS has managed to generate a degree of consensus that is rarely seen: everyone dislikes the "auto log."

OVERVIEW

The requirement that vehicles must be used for a business purpose in order to qualify for an investment tax credit and for depreciation deductions is not at issue. The apparent method that has been imposed by the IRS on business owners to document these claims, however, has changed dramatically. The Joint Committee on Taxation has estimated that these new recordkeeping procedures will result in revenues of \$150 million in 1985. Estimates from the National Federation of Independent Business are that these requirements will impose recordkeeping costs of \$1000 on 3 million businesses for a total cost of \$3 billion. Such small revenues hardly warrant such massive expenditures.

The recordkeeping requirements are only one facet of the regulations which should be examined. Like the regulation currently in effect, the proposed rule is unnecessarily confusing and the cumulative effect of the rule and the proposed change is particularly detrimental to the small business community. In this letter I will focus on two topics, the inadequate rulemaking procedures followed by the IRS in promulgating these rules and the failure of the IRS to explain the new rules to those who are being regulated.

INADEQUATE PROCEDURES IN DEVELOPING THE RULE

The IRS has stated that this rule is exempt from the economic analysis provisions of Executive Order 12291 and from the small business analysis requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 602 *et seq.*) The only estimation of the regulatory impacts of these rules is the burden estimation and clearance processes mandated by the Paperwork Reduction Act of 1980 (44 U.S.C. 3502(3)). This Act requires that the time, effort and financial resources expended by persons to provide information to a Federal agency must be estimated and that the collection of this information must be approved by the Office of Management and Budget. The factors that were used to estimate the burdens associated with the "auto log" requirement underestimated the real burdens that businesses will incur. The factors that IRS used were who must comply, how frequently compliance would occur and the time actually required to make specific entries. The IRS failed to account for all of the incurred costs and was erroneous in assessing the costs that were considered.

In examining the frequency with which compliance would occur, the IRS estimated that it would occur 270 times per year, based on the "hunch" that, once a day for five out of seven days, the respondent would make an entry. The original regulation, however, imposed a rigorous requirement that an entry be made virtually every time the ignition was started. While the revised regulation does not seem to require this, the necessity to allocate use among employees or to demonstrate business use in the first place will clearly require more than one entry per day.

This is at odds with the figure of 270 entries per year, because it assumes that there is only one business use of the vehicle per day.

The IRS, without explanation or documentation, asserted that each entry took .05 hours to make. The IRS then incorrectly calculated .05 hours to be one minute per entry when, in fact, the correct calculation is three minutes. This miscalculation was repeated every time the IRS revised its burden estimate, which means that the current burden estimate for the revised regulation should be tripled. Obviously the clearance process associated with the approval of the "auto log" requirement shows some weaknesses that should be corrected. The fact that such a simple calculation is wrong by a factor of three calls into question the entire burden estimation process.

However, the room for error in analysis is compounded because paperwork burdens include much more than counting the minutes required to record that the vehicle was used for business purposes. The burden includes, among other things, the time and expense of learning of and understanding the requirements; consulting with an accountant or, worse, trying to read and understand the regulations; setting up and testing the system adopted to meet the requirements, including some kind of log, and instructing employees on its proper use; making the entries; compiling the records and incorporating them into the business' accounting procedures; making appropriate allocations of non-business use to employees as fringe benefits; and storing the records for the required time periods. These are some of the things that constitute the real burden. The business representatives who testified before the Committee documented these costs quite well.

NEED FOR CLEARER GUIDANCE

The regulation is also troubling because it is difficult for the average small businessperson to understand. Although the rule states that it replaces the original regu-

lation, continual reference must be made to the original rule in order to adequately understand the proposal. The rule is replete with formulations and calculations for numerous different types of uses and is unclear about what should be recorded, especially if a vehicle is used by different employees for different purposes.

Although a "safe harbor" has been created for persons who spend most of their normal business day using a vehicle, definitions of who qualifies and what is a normal business day are unclear. The 70:30 or the 80:20 safe harbor may be inadequate to reflect the actual use of a vehicle. In the case of salespersons, for example, the Chamber of Commerce has estimated that their actual business use of a vehicle may be closer to 90 percent. Employers and employees are left with a dilemma. They can claim 70 percent business use and report the 30 percent as income to the employee or they can keep extensive records to show that the business use of the vehicle exceed 70 percent or 80 percent. Either way, costs can be significant.

Additional problems occur if there are several employees who use the vehicle during the year. Extensive records will have to be maintained in order to distribute the 30 percent imputed income when the 70:30 safe harbor is elected. The accounting community has told this Committee how elaborate the recordkeeping problems are going to be for businesses that must maintain such records. The regulations and instructions fail to address such situations.

What most small businesses will likely do is opt for the safe harbor of 70 percent or 80 percent depreciation, thereby eliminating any problems with compliance. Such a choice, however, may cause them to pass on extra, unrealized income to their employees and create burdensome ways to impute that income. The continued success of small business is essential to the continued growth and stability of the economy. Regulations, such as these, that significantly and adversely affect small business can only serve to undermine the economic contribution of this important sector.

Very truly yours,

FRANK S. SWAIN,
Chief Counsel for Advocacy.

AMERICAN ASSOCIATION OF COMMUNITY & JUNIOR COLLEGES,
Washington, DC, March 5, 1985.

MR. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. DOWLEY: On behalf of the American Association of Community and Junior Colleges, representing more than 1200 colleges nationwide, we would like to express concerns with the proposed regulations on taxation of fringe benefits in the January 7 and February 20 Federal Register.

The National Association of College and University Business Officers has gone on record with you regarding specific suggestions which we support.

Simplification of recordkeeping is imperative and the establishment of standard deductions is the only approach which makes sense where ridiculous recordkeeping and auditing are involved.

A garbage can of regulation creates a garbage can of senseless recordkeeping.

Please be sensitive to the very strong concerns being expressed nationwide and the need for simplicity both from organizational and individual standpoints.

Sincerely,

BERNARD J. LUSKIN,
Executive Vice President.

AMERICAN DENTAL ASSOCIATION,
Washington, DC, March 7, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, Washington, DC.

DEAR MR. CHAIRMAN: The American Dental Association appreciates this opportunity to present its views on H.R. 600, H.R. 531 and the numerous other bills, with over 250 congressional sponsors, to repeal or modify recent Internal Revenue Service regulations that mandate "contemporaneous recordkeeping" of the business and personal use of automobiles and certain other types of property and activities.

We commend you for conducting these hearings. The testimony and discussion you receive should be helpful in gathering information on the need for escalating present compliance standards on the deductibility of such expenses versus the addi-

tional administrative and recordkeeping burden placed on individual and small business taxpayers.

There are many dentists engaged substantially in hospital practice or with more than one office who undoubtedly will be affected in an adverse manner by this unnecessary and burdensome "contemporaneous recordkeeping" regulation on the business and personal use of automobiles and certain other listed property and activities, including travel, entertainment and recreation.

Even though this proposal was recently modified by the IRS, it has not materially changed the potential burdens of the regulation. We would therefore recommend that legislation, such as H.R. 531, be adopted to repeal the recently enacted Section 179(b) of the Deficit Reduction Act and this proposed regulation, and that the original standard of compliance of Section 274(d) of the Code on recordkeeping substantiation of such expense be restored.

This prior standard of substantiation would seem to be adequate to distinguish between taxpayers' personal and business use of automobiles and certain other property. While not requiring daily logs and additional paperwork as set forth by the newly proposed regulation, it would require "adequate records or sufficient evidence" such as customers serviced or records of patients visited. It seems to our Association that these standards are sufficient for the IRS to evaluate business and personal use of automobiles and other property.

In conclusion, on behalf of the association, it is respectfully urged that you and your colleagues adopt H.R. 600, H.R. 531 or other similar legislation. We look forward to working with you and your colleagues to develop a reasonable and workable alternative to this burdensome and unnecessary IRS regulation.

Sincerely,

JACK S. OPINSKY, D.D.S.,
Chairman, Council on Legislation.

STATEMENT OF THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

The American Institute of Certified Public Accountants is extremely troubled with and requests the repeal of Code Sec. 6695(b) as amended by the Deficit Reduction Act of 1984 (P.L. 98-369). The section provides:

(b) Failure to Inform Taxpayers of Certain Recordkeeping Requirements or To Sign Return.—Any person who is an income tax return preparer with respect to any return or claim for refund and who is required by regulations to sign such return or claim—

(1) shall advise the taxpayer of the substantiation requirements of section 274(d) and obtain written confirmation from the taxpayer that such requirements were met with respect to any deduction or credit claimed on such return or claim for refund, and

(2) shall sign such return or claim for refund. Any person who fails to comply with the requirements of the preceding sentence with respect to any return or claim shall pay a penalty of \$25 for such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect.

We share the concern of Congress that some taxpayers are taking business deductions for what are essentially personal expenditures. We are concerned, however, that the "written confirmation" requirement and related penalty will cause taxpayers to perceive CPAs as "quasi-IRS agents" rather than the taxpayer advocates that they are. We believe that this requirement infringes on an activity that is more appropriately the role of the IRS and that the preparer's responsibility should extend, as under prior law, only to the requirement to inquire as to the existence of the records required to take the deduction.

The reasons for our opposition to the "written confirmation" requirement can be summarized as follows:

The requirement changes the basic relationships among the taxpayers, the preparer, and the IRS.

The requirement is inequitable, in that it impacts only those who use return preparers.

"Written confirmation" will not prevent cheaters from maintaining false records.

The requirement is irritating to taxpayers and does not promote self-compliance—the actual intent of the law.

If Congress wants to insure that taxpayers are complying with the substantiation requirements of section 274(d) it could be achieved in a much less intrusive way by letting the public know that there will be increased audit efforts in the problem area by the IRS. This was the successful approach used in dealing with "office in

home" deductions, where abuse situations developed as people tried to take business deductions for personal expenditures.

This provision is the only place where "written confirmation" of tax return items is required, other than the general preparer declaration that the return is true, correct, and complete based on all information of which the preparer has any knowledge. If "written confirmation" is essential, it should be required of all taxpayers directly to the IRS. This could be accomplished by placing direct questions or a separate form in tax returns where taxpayers claiming such deductions would be required to state, under penalties of perjury, that the required records have been properly maintained.

As CPAs, we believe that our clients comply to a very degree with the tax law. We do support efforts to improve compliance by the taxpaying public in general. However, we believe that the "written confirmation" requirement of Code Sec. 6695(b) and related penalty is unnecessary and undesirable for the tax system and we again call for its repeal. We would be happy to provide any additional information which might be helpful in this matter.

STATEMENT OF THE AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association ("APPA") submits the following statement on the issue of taxation of government-owned vehicles provided to public employees who perform critical services during non-business hours. APPA is the national service organization representing more than 1,750 local publicly owned electric utilities nationwide.

Pursuant to the Tax Reform Act of 1984, the Internal Revenue Service (IRS) issued regulations requiring public and private employees, who take employer-provided vehicles home to do work during non-business hours, to include a portion of the lease value of those vehicles as income in calculating their federal income tax obligation. On February 20, 1985, the IRS released revised regulations which liberalize recordkeeping requirements and reduce the imputed income of vehicles used for commuting.

APPA's Legislative and Resolution's Committee recently adopted the attached resolution setting forth its views on this issue. In addition, many general managers of municipally owned utilities have expressed their strong opposition to this provision in the Act and its implementation by the IRS. A sample of their comments also is attached to this statement.

Municipal utility employees used government-owned vehicles during non-business hour to perform the following essential public services.

Repair and maintain facilities used in providing electricity, water, gas and sewage treatment.

Restore service to hospitals or residences, or remove dangerous objects such as fallen power lines;

Provide assistance needed so police, fire and ambulance crews can then handle emergency situations; and

Respond to electric contact accidents involving utility employees or the public.

Without immediate access to utility vehicles, the delays could cause serious harm to the public safety and welfare. And, for this very reason, many utility employees are required to take vehicles home to have them at their immediate disposal.

If the value of these vehicles remains taxable income, it will impose an onerous and unjust burden on municipal electric utility employees. These employees are already inconvenienced by having to be "on call" 24 hours a day, 7 days a week. Their salaries and benefits only partially compensate them for this inconvenience. Also, they gain no significant personal use from these vehicles and, thus, this could hardly be considered a "fringe benefit" that should be taxed. The revised IRS regulations provide no relief, including those reducing the imputed value of vehicles used for commuting if utility employees can, in fact, take advantage of this particular provision.

In addition, the IRS regulations may require them to keep detailed unnecessary records of their vehicle use. The revised rules liberalizing these requirements, again, do not provide an appreciable assistance.

For these reason, the American Public Power Association urges the Members of the House Committee on Ways and Means to give quick approval to legislation such as H.R. 600, the "Taxpayer Relief Act of 1985," which would rescind the IRS' authority to tax the value of these vehicles. Alternatively, APPA recommends the committee amend H.R. 773 to explicitly include government-owned vehicles provid-

ed to municipal utility employees within the definition of "qualified public vehicle" as set forth in proposed Sec. 132(6)(B)(i)(II).

Thank you for this opportunity to present our views.

[Attachment]

TAXATION OF EMPLOYER-PROVIDED VEHICLES USED TO PERFORM ESSENTIAL PUBLIC SERVICES

Whereas, many municipally owned utilities require essential employees to take utility-provided vehicles home; and

Whereas, utility employees use these vehicles during non-business hours to respond promptly to the maintenance and repair of facilities used in the provision of essential public services such as electricity, water, gas, and sewage treatment; and

Whereas, the Internal Revenue Service (IRS) has adopted temporary regulations pursuant to the Tax Reform Act of 1984 requiring such employees to treat the lease value of these vehicles as a fringe benefit subject to federal taxation; and

Whereas, the IRS also has initiated a rulemaking procedure to make such regulations permanent; and

Whereas, these regulations will impede the performance of essential public services and impose unreasonable recordkeeping requirements and unnecessary tax burdens on these essential public employees; now, therefore,

Be it resolved, That the American Public Power Association urges the Congress to enact legislation such as H.R. 600, the "Taxpayers Relief Act of 1985," to repeal this requirement or, at a minimum, exempt employees who take employer-provided vehicles home to perform essential public services from having to include the value of such vehicles in calculating their federal income tax obligation, and

Be it further resolved, That until such an exemption is enacted, the IRS should adopt regulations minimizing the recordkeeping burden on public employees.

Adopted by the Legislative and Resolutions Committee of the American Public Power Association February 27, 1985, in Washington, D.C.

[Attachment]

**MUNICIPAL LIGHT & WATER,
BOARD OF PUBLIC WORKS,
North Platte, NE, January 24, 1985.**

**Mr. PAUL FRY,
American Public Power Association, Washington, DC.**

DEAR MR. FRY: Municipal Light and Water, City of North Platte has five Supervisory positions that it is required they have the Company vehicles at home to facilitate quick response and access to the mobile radio during emergencies. These people are on a monthly salary and on 24 hour call. It really doesn't seem proper to tax as a fringe benefit the commuting to the general office. Can you help us with an appropriate I.R.S. ruling on this.

Additionally we require one electric and one water person to be on call each night and weekends. Naturally a vehicle with mobile radio is assigned and the employee required to have it at home. No personal use, other than commuting to the general office, is allowed as is the case with the supervisors. It seems that an exemption is in order in this situation. Please respond with how the picture looks to you.

Also please send a copy of the regulations.

Very truly yours,

JOHN F. COX, Manager.

[Attachment]

**TENNESSEE VALLEY PUBLIC POWER ASSOCIATION,
Chattanooga, TN, January 31, 1985.**

Attention: CC: LR: T (LR-216-84).

Re Proposed and Temporary Internal Revenue Service Regulations On Taxation of Fringe Benefits, Filed January 2, 1985

**COMMISSIONER OF INTERNAL REVENUE,
Washington, DC.**

DEAR COMMISSIONER: The Tennessee Valley Public Power Association ("TVPPA") is an association representing the interests of 160 rural electric cooperatives and municipally-owned electric utilities which distribute power in the Tennessee Valley region to more than seven million citizens.

We are submitting the following comments in connection with the Temporary Regulations, (LR-216-84), T.D. 8004, issued by the Internal Revenue Service on the taxation of fringe benefits. These comments deal specifically with provisions of the temporary regulations regarding employer-provided automobiles.

The member utilities represented by TVPPA are without exception organized as nonprofit entities, either exempt from taxation under Internal Revenue Code Section 501(c)(12) or non-taxable as a unit of local government, to provide electric power to their communities at the lowest possible cost. As nonprofit and non-taxable entities, the member utilities have no economic need for and cannot use the investment tax credits or depreciation associated with items such as employer-provided automobiles. Utility-provided vehicles are available to employees of the utilities only to assist them in the quick and efficient performance of their duties in responding to emergency situations and to reduce cost for utilities.

The temporary regulations issued regarding employer-provided automobiles are not only economically burdensome for the utilities in terms of record keeping, but expensive to the ratepayers being served by the utilities. Many of the vehicles used by the utility employees are service vehicles of varying natures which are used to respond to power outages and make emergency repairs. Employees are required to take these vehicles home so that the utility may respond to a critical situation in a minimum of time. Storing the vehicles at a central location is not practical or economically feasible for many member utilities of TVPPA since such utilities service expansive rural areas. Utilities reduce costs by not having to store these vehicles in a central location as well as reduce the incidents of vandalism to such vehicles. In the rural areas, the utility employee responding to an emergency situation is often at least thirty minutes away from the utility headquarters. Storage of these vehicles at a central location would require an employee to make a trip from his home to the utility headquarters to pick up the vehicle and then proceed to the site of the emergency, increasing response time to power outages in emergency situations by at least an hour, most probably more. Hospitals are an example of an institution that depends on utilities to restore power as quickly as possible, particularly in rural areas where one hospital may service many communities. Also, in time of extreme cold, electric power needs to be restored as quickly as possible since it is the primary heat source for many families.

Since these utilities do not have the tax advantages of investment tax credits and depreciation associated with the employer-provided vehicles, the extra expense involved in complying with these provisions of the Temporary Regulations is neither reasonable nor justified particularly since such expense must necessarily be passed directly to the consumer in the form of higher rates. Also, since the utility employees are given no choice of whether they will take such utility vehicles home and since generally such utility-provided vehicles are not suitable for personal use, no real benefit is gained by the utility employee in the use of such vehicles. Consequently, the requirement that the value of such vehicles be included in the gross income of the employees is inequitable and unreasonable. The result is that the employee is taxed on the value of something that he has neither had the benefit of nor has received; and although the employee receives some benefit from commuting in the vehicle, no doubt most employees would prefer to drive their own vehicles rather than be burdened with a utility vehicle.

In order that the utilities represented by the TVPPA can continue to supply reasonable priced and reliable electric power to the consumers in the Tennessee Valley, it is requested that before final regulations on the taxation of fringe benefits are issued, a provision be including exempting utilities owned by state or local government or their board or agencies and electric cooperatives and their employees from the provisions regarding employer-provided automobiles.

We would appreciate your help in resolving this important and serious problem facing the utilities and electric cooperatives represented by the TVPPA.

Please direct all information, notices and questions on this matter to the undersigned at the above address.

Very truly yours,

JERRY L. CAMPBELL,
Executive Director.

[Attachment]

**PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY,
Pasco, WA, February 19, 1985.**

Mr. PAUL FRY,
American Public Power Association, Washington, DC.

DEAR MR. FRY: I request that APPA file a comment as to an exemption for the use of District vehicles for emergencies. Certain employees of the District perform "standby" duty after normal working hours including Saturdays, Sundays and holidays. These employees receive all calls from an answering service.

These employees take home (only when on standby) a District vehicle equipped with a two-way radio for the following reasons:

1. To be able to go directly to a site reported to have downed wires.
2. To give assistance in dispatching in time of trouble.
3. To respond immediately to electrical contact accidents, either District employee or general public.
4. To investigate and take pictures of accidents involving District's equipment (poles, transformers, fences, etc.)
5. The vehicles are equipped with emergency equipment, first aid kits, bolt cutters, flares, four-way flashers, fire extinguishers, etc., for emergency situations.

District's policy is that the vehicle is for District use only; not personal use at any time.

It is imperative that the standby person be able to respond directly to the scene with a properly equipped vehicle. In the case of downed lines and other electrical hazard situations—protection of the public's safety can best be accomplished by the employee reporting directly to the scene rather than waste time driving a personal vehicle to headquarters to pick up a District vehicle.

I am asking your help in obtaining an exemption for these vehicles. Also, please send a copy of the regulations.

Sincerely,

S. DIANE DOLAN,
Auditor/Comptroller.

[Attachment]

CITY OF PALO ALTO,
Palo Alto, CA, February 1, 1985.

Mr. PAUL FRY,
American Public Power Association, Washington, DC.

DEAR MR. FRY: In regard to the Public Power Association article of January 21, 1985 regarding taxation of employee provided automobiles, I would make the following comments:

Utilities often require certain employees to drive City vehicles for specific purposes. I refer to standby conditions where after hours emergency service is provided directly to the emergency site from the employee's home by means of having appropriate vehicles assigned to those people. This is an extra duty and often only partially compensated in terms of salary and benefits and is more often than not an imposition on the employee's time. An attempt to tax their use of the vehicle because of incidental transportation supplied back and forth to the work station could very easily result in their refusing to accept such assignments. This could totally destroy the program resulting in a considerable deterioration in the service level properly provided.

It is understandable that there might be reason to tax privileged use of an employer provided vehicle, but it is obvious to my mind that the direct assignment as part of their work should not bear in this issue. One solution might be to exclude from such provisions vehicles that are exempt licensed. Other than that, the IRS would have to rely on an employer affidavit stipulating that the use of the vehicle was required by job assignment circumstances. We operate four Utilities in Palo Alto and supply emergency service for water, gas, electric, and sewer customers. Obviously, any delay in response, particularly to electrical and gas problems, could be life endangering and I would not want to be responsible for any deterioration in our ability to respond.

Please add our concerns to any comments you may make and inform us of any action that does result. We appreciate your efforts in our behalf.

Sincerely,

RICHARD L. YOUNG,
Utilities Director.

STATEMENT OF AMERICAN PULPWOOD ASSOCIATION, INC.

The American Pulpwood Association's ("APA") members include (1) independent logging contractors who harvest pulpwood, the basic raw material for the manufacture of pulp, paper, and paperboard, and (2) pulp and paper companies. Pulp and paper companies are the primary purchasers of pulpwood and also are engaged in the harvesting of pulpwood and the management of forested lands. Both logging contractors and mills, therefore, are engaged in forestry and utilize trucks and vans under and over 6,000 pounds in their forestry operations.

Our members support the outright repeal (as embodied in HR 783, S 260, and similar proposed legislation) of the portion of Temporary Treasury Regulation #1.280 F-6T that requires taxpayers to keep "adequate contemporaneous records" on use of certain listed property. If this portion of the temporary regulations is not repealed through Congressional action, we hope the IRS will take into account the following information and grant an exemption from the recordkeeping requirements for trucks, vans, and other listed property used in forestry.

DEFINITION OF PASSENGER AUTOMOBILE

The Code defines "passenger automobiles" as all four-wheeled vehicles which (i) are primarily manufactured for use on public streets, and highways, and (ii) are rated at 6,000 pounds gross weight or less. #280 F(d)(5)(A). Because of the relatively low gross weight threshold, the definition, therefore, encompasses lightweight trucks and vans. Congress, recognizing that the weight threshold would make vehicles which, in fact, are not "passenger" automobiles subject to the limitations of Section 280 F(a), empowered the Secretary to exempt trucks by regulation. See Section 280 F(d)(5)(A).

Consistent with the authority of the Secretary and the clear intent of Congress that the target of the amendment was luxury passenger cars, it is the position of APA and its members that trucks and vans used in forestry should be exempted by regulation from the limitations on investment credit and depreciation found in Section 280 F(a). Our position is predicated upon the fact that a lightweight truck or van used in forestry is *not* a "PERK." Such a vehicle is an operational necessity for both employers and employees. The business conditions which underlie that premise are as follows:

1. Forest roads and trails are not boulevards and highways. They are instead primitive, unpaved, unimproved, rugged, and, depending upon terrain, steep and/or swampy. Forested work sites simply are not accessible by automobile. Depending upon terrain conditions, it is improbable that any truck used in forestry does not have an absolute minimum of at least two of the following:

- A. High road clearance to clear the obstructions common to the forest floor;
- B. Rugged suspension systems to negotiate the harsh operating environment;
- C. Special off-highway tires, for example, mud grip tires, to operate in and on various terrains;
- D. Four-wheel drive;
- E. Special guarding to protect the vehicle (and the operator) against the hazards of operating in the forest;
- F. Two-way radios to provide communications from remote areas, particularly during emergencies;
- G. Special truck bodies for carrying tools, fuel, lubricants, spare parts for logging machinery, chain saws, planting and mechanics tools, and other operational equipment;

H. Winches.

2. Although lightweight trucks are capable of being used on the highway, that capability is not a significant consideration in the decision to purchase such vehicles by one engaged in forestry. The decision to invest in such a vehicle is predicated upon the vehicle's ability to traverse forest roads and trails inaccessible by a passenger automobile and survive an environment which would destroy a passenger automobile.

3. Getting to and from forested sites is not comparable to getting to and from an office or plant. There is no highway access to timber harvesting work sites, nor are there employee parking lots in forests. Independent logging contractors and their employees, as well as mills, own and provide employees such vehicles because the vehicle is an essential tool in the forestry business.

4. Frequently, employees keep the vehicle at their homes. The following are a number of the reasons why the vehicle must remain with the employee at all times:

A. To shorten response time in emergency situations. During dry spells, for example, forest fires are an ever-present danger. If access to a suitable vehicle is not im-

mediately available (day and night), the increased response time can result in damage to capital equipment and increased damage to the forest itself.

B. To enhance security. Forested areas of the country are rural and off the "beaten path." Given the fact that forestry operations move from site to site, there is no such thing as a "convenient" compound where vehicles and equipment can be stored. The truck itself serves as a warehouse for expensive replacement parts, forestry equipment, fuels and lubricants. In highly rural areas, the only safe place for equipment is generally an inhabited location, that is where the employee resides.

C. For operational efficiency. Because the truck is a warehouse and given the lack of garage sites, it is an essential part of the employee's job to get the vehicle to the forest area where the logging operation is being conducted.

5. During dry periods, the two things common to all forest floors are dirt and dust. During wet periods, forest roads and trails turn to mud. The one thing common to all trucks used in forestry is that they become extremely dirty. Realistically, these vehicles are totally unsuitable for personal or family use. One simply does not take the family to church or go shopping in a woods truck.

6. Most independent logging contractors are small businessmen whose capital investment in the equipment necessary simply to harvest timber is staggering. The investment in a truck or van is itself a prime indication that the vehicle is a business necessity. That additional investment would not have been undertaken unless the truck or van were essential to the conduct of the business.

We believe the foregoing fully demonstrates that a lightweight truck or van in forestry cannot, even remotely, be considered a "PERK." Such vehicles are purchased because of their functional utility in and on logging operations. As previously stated, it is the position of APA that the regulations should recognize the unique operational conditions which exist in forestry by specifically exempting lightweight trucks and vans used in forestry from the definition of "passenger automobile."

LISTED PROPERTY

The recordkeeping requirements, as proposed, are burdensome for both large and small businesses. For small businesses, such as independent loggers which generally employ five or fewer employees, the requirements become particularly onerous. Further, it is an unfortunate fact that, in the logging business and many other businesses conducted in rural areas, a not insignificant number of employees can neither read nor write. The situation is improving, but illiteracy is the fact of the day. Maintaining contemporaneous logs of day-to-day use under such circumstances begins to approach the impossible. The point here is not simply to do away with all recordkeeping requirements because a business is small or operates in an area where the level of education is significantly below national standards. Rather, the point is to utilize regulatory approaches which exempt taxpayers from the recordkeeping requirements when, with reasonable certainty, it can be determined that business use is likely to account for 100% of total use of the vehicle.

The regulatory approach of the current temporary regulation essentially says "look at the vehicle or property" to determine if the vehicle or property is of a type ordinarily unsuitable for personal use. We agree with the utilization of that principle. However, we believe it should not be the exclusive principle for a determination that "listed property" is unsuitable for personal use. Equally probative of total business use is the business in which the vehicle is utilized.

We believe that the forest conditions which dictate the use of lightweight vehicles or trucks fully demonstrates that the business use of such vehicles will equal 100% of the use of such vehicles. If, for forestry vehicles under 6,000 pounds, personal use is simply not a reasonable likelihood, personal use of heavier trucks becomes even more remote. Further, there is no possibility of commuting use. Even when a heavier truck is "garaged" at an employee's home overnight, the reasons for doing so are similar to those given with respect to lighter vehicles—response time, security, and operational efficiency. Frequently pulpwood trucks are parked overnight at an employee's home fully loaded, so that deliveries to a mill or woodyard may begin immediately the next morning. Management of any capital-intensive business requires the most efficient utilization of equipment.

The urban/suburban concept of commuting simply can *not* be applied to forestry operations. The site may change daily, the terrain does change daily, and there simply exists no other access to the forest. In the real world of forestry, and employee keeping an employer's "listed property" at his residence is not commuting to work when he gets into the truck in the morning. From the moment the engine turns over, that employee is working.

We respectfully suggest that the recordkeeping regulations, in addition to focusing upon the vehicle, also focus upon the business utilization of a vehicle as a determinant of whether or not business use is essentially the exclusive use of the property. The nature of forestry which makes personal use of lightweight vehicles so improbable applies with equal if not greater force to heavier vehicles. Considering the discomfort of heavier vehicles, the limitation on the roads, upon which they can be used, their driving characteristics, and their fuel utilization, personal use can clearly be described as a non-event. Accordingly, all listed property utilized in forestry should be specifically exempted from the recordkeeping requirements for "listed property."

AMERICAN RENTAL ASSOCIATION,
Moline, IL, March 5, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, House Ways and Means Committee, Washington, DC.

DEAR MR. ROSTENKOWSKI: The American Rental Association ("ARA") a national trade association, comprised of over 4,000 member firms engaged in the business of renting diverse items of personal property. Our national office is located in the ARA Building at 1900—19th Street, Moline, Illinois 61265.

ARA member firms rent a very wide variety of equipment and other personal property, including such lines as homeowner items; party supplies and equipment; construction machinery and equipment; vehicles and other mobile equipment; medical equipment and devices; and exercise and recreational equipment. ARA is in its 30th year of operation and is the leading organization representing the industry of personal property rentals. Mixed use of company vehicles in sales and service is an integral part of their daily business operation.

Our member firms wish to comment, as part of your hearings this week, with respect to the Treasury Department's temporary and proposed regulations implementing the new "adequate contemporaneous record-keeping" requirements for business use of automobiles and other vehicles, i.e., Sec. 1.274-5T.

The regulations were ill conceived, hastily drawn, and incorporated in the Tax Reform Act of 1984 (Sec. 179, P.L. 98-369). With notable zeal, the IRS promulgated its first set of proposed regulations implementing the new statute. Predictably, IRS received a flood of protests from the public and again, hastily responded in token measure by issuing temporary regulations (50 FR 7038) modifying the substantiation requirements for deductions and credits with respect to certain listed property. The IRS modifications, however, are ineffectual and do little to alleviate the paperwork burden on businessmen and particularly, the small businessman. Further, IRS has suffered some loss of credibility in the process and there is some basis for concern as to what further modifications it might promulgate in the future if Sections 1.274-5T, 1.264-6T are allowed to remain in the Internal Revenue Code.

These stringent requirements for very detailed, contemporaneous records of the use of company-owned automobiles and certain other equipment items are neither fair nor wise. These paper-generating provisions interfere with normal business operations and impose an unreasonable and oppressive burden on small businesses which simply cannot bear the lost time, reduced productivity and unnecessary record-keeping expense.

This basically is a paperwork issue and not a tax policy question. We vigorously object to the absurd burdens imposed on taxpayers as a condition to their obtaining a legitimate business deduction.

We urge the outright repeal of these onerous, costly and counterproductive provisions. Any action short of outright repeal, will not only enormously and unnecessarily increase the paper-work burden of all businesses and their employee but, moreover, will seriously erode public confidence in our voluntary tax system.

The American Rental Association appreciates this opportunity to express its views; and we request that this statement be made a part of the printed record of your hearing.

Respectfully submitted,

C.A. SIEGFRIED, Jr., CAE.

STATEMENT OF TERRY WESTHAFFER, PRESIDENT, AMERICAN RETREADERS' ASSOCIATION

Mr. Chairman and Members of the Committee on Ways and Means, I appreciate this opportunity to submit testimony to you today in opposition to the Treasury Department's revised temporary and proposed regulations relating to the record keep-

ing requirements for automobiles and certain other property. My name is Terry Westhafer and I serve as President of the American Retreaders' Association ("ARA"). ARA is a national nonprofit trade association representing approximately 1600 members who are engaged in the retreading of tires, the sale of tires, the repairing of tires, and the sale of related products and services.

ARA applauds Chairman Rostenkowski for calling this Committee hearing. The Chairman has correctly observed "that some taxpayers with legitimate business expenses may be facing unduly burdensome record keeping requirements as a result of the new law."

Under prior law, a taxpayer was required to substantiate any claim deduction for travel expenses, entertainment, recreation or gifts by adequate records. Taxpayers who could reasonably reconstruct these expenses could claim a deduction. Such records had to show the amount, time, place and business purposes of the expense (Code section 274(d)).

Section 179 of Public Law 98-369 amended prior law to require taxpayers to substantiate, with adequate contemporaneous records, and claimed credit or deduction: (1) with respect to the business use of listed property, such as automobiles, other transportation vehicles, any property generally used for entertainment, recreation or amusement, any computer equipment, and any property specified in regulations; (2) with respect to traveling expenses (including meals and lodging while away from home); (3) for any entertainment, amusement or recreation expense, including use of a facility for such purpose; and (4) for any expense for gifts. These record keeping requirements became effective for taxable years beginning in 1985.

On October 24, 1984, the Treasury Department published temporary regulations implementing section 179 of the Deficit Reduction Act of 1984 (PL 98-369), 49 FR 42701. On January 25, 1985, the Internal Revenue Service announced its intention to issue temporary and proposed regulations modifying the requirement to keep adequate contemporaneous records for automobiles and certain other vehicles (IR 85-6). These revisions are expected to be issued in the near future.

ARA would like to go on record to this Committee in opposition to the existing requirements. Many small businessmen, especially in this industry, operate company vehicles not so much as a fringe benefit, but as a necessary tool of doing business. To place further and excessive paperwork demands on the small businessman who is already overwhelmed by government regulations and paperwork seems unreasonable.

The new requirements have placed burdensome record keeping necessities on employers and employees, and is viewed by many as a further example of Big Government imposing on the small business community another obligation in a mass of Federal rules and requirements.

If you decide that records of vehicles use do indeed need to be recorded and maintained, we urge you to ease the burden by requiring the notation of personal use only. But ARA strongly urges that the entire requirement be rescinded.

STATEMENT OF DANIEL J. HANSON, SR., PRESIDENT, AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION

Mr. Chairman and members of the Committee, my name is Daniel J. Hanson, Sr. I am the President of the American Road & Transportation Builders Association, a national association headquartered in Washington, D.C., representing businesses and individuals concerned with all aspects of transportation development.

We appreciate this opportunity to comment on the Treasury Department's temporary and proposed regulations related to the keeping of records on the use of automobiles and certain other vehicles. While these regulations are onerous with respect to a broad spectrum of the business firms which are members of ARTBA, we wish to focus our attention today of the particular problems of the contractor involved in highway and heavy construction work.

UNIQUE NATURE OF THE BUSINESS

The highway contractor typically performs construction work simultaneously at several job sites remote from his headquarters office. A job site may be a specific location, such as a bridge, where construction operations will continue for a period of several months. It may also be a segment of highway extending several miles. Depending on the nature of the work to be accomplished on a given date, a worker may begin the day's work at one site and finish the day at another site. The worker does not necessarily begin his day's work at the same point where he stopped the day before. Depending upon the weather, the availability of materials, job priorities,

the particular skills of the worker, and other factors, the worker must be prepared to report to a different site on short notice.

The transient nature of the work, coupled with security considerations, dictates the general policy that small tools are not left overnight on the job site. These tools are loaded on pick-up trucks or other light utility vehicles and sent home with supervisory employees.

This arrangement is clearly advantageous to the employer. In the absence of such an arrangement, the employer would be forced to resort to expensive and impracticable alternatives.

DEFINING A FRINGE BENEFIT

Driving a company vehicle home from work obviously can be advantageous to the employee. His home-to-work transportation is provided.

In quantifying the advantage to the employee of this so-called fringe benefit, the disadvantages must also be taken into account. In the case of the construction worker, the disadvantages fall mainly into the category of providing security for the employer's property.

The employee, of course, is expected to return to the job site with the same tools he carried away. The nature of the security precautions he must take are generally not specified. It may be simply a matter of parking the vehicle in his back yard or some other reasonably secure area.

Whatever the nature of the security precautions, the employee will have some trouble documenting his costs for the purpose of his income tax filing. In many cases, he will file a short form and will have no opportunity to sustain a claim that the cost of storing his employer's property should be shown as a deduction from his wages.

As a practical matter, the tax impact of the arrangement is—or should be—a “wash.” The advantages are off-set by the disadvantages.

THE REGULATORY LABYRINTH

The Internal Revenue Service has devised a labyrinth of regulations to define the tax exposure of individuals and businesses relative to the personal use of vehicles owned by businesses.

The public outcry resulting from the publication in January of temporary and proposed regulations was followed by a revision of these regulations in February. The revised regulations provide some relief to some taxpayers, in terms of safe harbor protection to some classes of business and some simplification of the “adequate contemporaneous” recordkeeping requirement.

While these improvements are commendable, they are a step backward in terms of clarity. The taxpayer is now confronted with an almost impenetrable thicket of regulatory requirements.

We hope that this committee will be instrumental in providing legislative relief to spell out a clear mandate to the Treasury Department to levy this type of tax in a simple, equitable and non-discriminatory manner.

KEEPING THE RECORDS

The keeping of a vehicle log book may appear to be a simple matter to one who is attuned to office procedures. In point of fact, many businesses have long required employees to maintain such records when driving a business vehicle, for internal management purposes.

The situation is quite different with respect to a vehicle used throughout the day on a highway construction site. Several employees may operate the vehicle, usually for short trips but, on occasion, for fairly long trips, as to the employer's shop or yard or to the establishment of a vendor. Grease and dirt are part of the work environment, and the employee does not necessarily carry a pencil. The record which is compiled under such circumstances is likely to be partially illegible and may be incomplete. The value of such a record in preparing a tax return is virtually nil.

At minimum, IRS must provide for the acceptance of a certification by the employer that the vehicle in question was used, essentially, for business purposes.

Mr. Chairman, we appreciate this opportunity to present the views of the American Road & Transportation Builders Association.

STATEMENT OF WILLIAM M. QUINN, AMERICAN SUPPLY ASSOCIATION

Mr. Chairman, I am William M. Quinn, President of the General Pipe & Supply Company of Memphis, Tennessee, and chairman of the American Supply Association's Government Affairs Council. ASA is the national association for wholesaler-distributors of plumbing-heating-cooling-piping products. Of the 4,000 p-h-c-p wholesalers throughout the country, most are like me, small businessmen whose supply-house operations require extensive use of company vehicles. Legislation passed in 1984 and regulations issued in October and January are the reasons for my appearance before you today. The changes in the tax law and their consequent effect on our businesses has created havoc in our industry. They are impractical. They impede our ability to conduct our business efficiently. They will inspire cheating on the one hand or deprive citizens the advantage of bona fide credits and deductions on the other. It is no wonder that these changes have witnessed the greatest level of outrage that I have ever observed at ASA. The response has been deafening.

RECORDKEEPING

At the very core of the problem is the statutory requirement for "contemporaneous recordkeeping." While many details remain unresolved until the Internal Revenue Service issues its latest changes to the recordkeeping rules, the basic statutory requirement remains unchanged: taxpayers are required to substantiate their business and personal use of vehicles with records made "at or near the time" the property is actually used. This in essence requires a log, maintained in the vehicle and annotated after each uninterrupted business use. As a practical matter, I can tell you that this disruption interferes substantially with the activity of our employees. It requires an absurd attention to detail and interrupts a train of thought or activity that is far more important to our business than the value that is derived from the tax deduction of a few miles. The choices are several: the driver can attempt to reconstruct a log well after the fact and ignore the requirements of the law; the driver can accept additional income and therefore incur additional tax liability by ignoring the log and having the mileage treated as personal usage; or the company can subsidize the driver's additional tax in the interest of productivity. [IRS' proposed change permits some employees to opt for a fixed amount, 70%, as business usage in return for eliminating the recordkeeping requirement. This completely arbitrary provision unwittingly rewards the extensive personal use of automobiles: it requires no records when personal use in fact exceeds 30%, yet requires 100% substantiation when a vehicle is used exclusively for business and a 100% write-off is due. In other words, the more you drive a vehicle for business purposes, the more you are penalized.]

The recordkeeping required of the company can be staggering. A company not taxed on a calendar year basis must maintain records compiled to substantiate its own credits and deductions on a fiscal year basis. It must also maintain vehicle usage records on a calendar year basis for each employee. Where a vehicle has more than one driver in a calendar year, separate accounting must be made for each driver. [Allocation of personal mileage between two drivers on occasions when no record is kept is an even thornier problem.] Withholding for taxes and social security will require additional accounting steps. And, five percent (5%) owner usage will trigger separate attention with an eye to facing recapture of depreciation and investment tax credits taken in earlier years.

EMPLOYEES

What then will be the practical effect of these recordkeeping requirements? Many businesses will opt, as I have heard some suggest, to simply "bonus out" company vehicles. That is, a company facing this mass of paperwork will give an employee his assigned company vehicle as compensation and close the books on the aggravation once and for all. It will then become the employee's automobile and his deduction to substantiate. Another alternative for a company is to compensate employees for business use of their own vehicles. The result is the same: the burden will pass to the employee and it will fall hardest on those with the greatest business use of their vehicles.

OWNERS

The most clearly anti-small business feature of the new regulations is the treatment of the 5% owner and their relatives who, according to the summary of the yet-to-be issued IRS regulations, are not relieved of the full-scale recordkeeping require-

ment by the revised IRS regulations. A 5% owner also faces not only additional personal income and taxes, but also economic penalties to his company.

It is most important to note a distinction. When an ordinary employee uses a vehicle and cannot substantiate that a vehicle is used more than 50% for business, the employee must pay personal income tax for his personal use of the car, but the company still receives its full ACRS and ITC benefits. A 5% owner, or related party, faces a different situation.

Under the regulations, a 5% owner, or related taxpayer, is required to establish more than 50% actual use of the asset in order to take advantage of the benefits of ACRS and ITC. The 5% owner must, therefore, maintain the needed records to establish more than 50% business use or penalize his company. To repeat, the 5% owner faces this penalty in addition to incurring additional personal income and taxes.

This provision applies to numerous people in a family-operated business and its practical effect can work a serious injustice in businesses like ours at ASA. Many of the chores in a small business are done on a do-it-yourself basis: if an account needs personal attention, you go do it yourself. Family members are likely to work in every phase of the business, in many instances requiring transportation in a wide variety of vehicles. Business use of the company vehicle is likely to occur frequently throughout the day.

The 5% owners are probably the most important figures in the business, people who can least afford to spend the time to maintain meticulous records during the busiest and most productive periods of the day. Yet the new regulations require more recordkeeping from them and impose the most burdensome penalties if they choose not to do so.

ASA'S POSITION

The American Supply Association is directly impacted by the statutory and regulatory changes resulting from the 1984 tax law. As we have said to individual members of Congress in our letters, we have no quarrel with the efforts of both Congress and the IRS to address abuses in the use of luxury automobiles or to place limits on the personal use of automobiles used in a trade or business. We are—to a member—however, outraged at the web of complicated, confusing and impractical regulations that, no matter how well-intentioned, misguidedly attempt to address these issues. That solution is off-the-mark. Our businesses require extensive use of vehicles and we, more than many others, face a far greater burden than Congress could reasonably have contemplated when it required “contemporaneous records”. While our businesses are small businesses, we nonetheless maintain a substantial fleet of automobiles—as many as 30 vehicles not being uncommon.

The solution cannot be found by regulations that either solve only part of the problem or ignore the precise words of the statute. The solution must reach behind the regulations to the statute and repeal the offending language.

It is extraordinary, in a year when the watchwords in the Nation and on Capitol Hill are “tax simplification,” that we should even face such a circumstance. Similarly, it will be a disgrace if such misguided and ill-conceived restrictions on our businesses are permitted to remain.

GEO. E. ANDERSON CO., INC.,
Dallas, TX, February 28, 1985.

Congressman MARTIN FROST,
House of Representatives, Washington, DC.

DEAR MARTIN: I address you as “Dear Martin” because I feel very friendly toward you as I have lived in the Oak Cliff-Duncanville area nearly all my life, and I feel that your representation of this area is classical.

Your response to my individual letters regarding the IRS interpretation of the mandate given by Congress to them and the abuse of this mandate has been deeply appreciated.

I am President of a manufacturers representative agency which was established here in Dallas in 1928, and has all through the years tried our best to be God-fearing, tax-paying, law-obeying proprietors of the business that pays its share of taxes both personal and company wise.

We have a CPA who advises us on their interpretation of the laws of the land and IRS regulations, and we follow them to the letter so as to avoid any audit by IRS or, if an audit is evident, to be certain that our books are spotless.

However, the new IRS regulations are going to turn honest business men and salesmen into what amounts to the word "liar" because there is no one who makes calls and tries to earn a living as an outside salesman who can take time to stop and become a bookkeeper when he has so much responsibility to his customers and his company.

It would seem to me that if a company manager is satisfied with the performance of the salesman in the field in the way he handles company equipment, that that would be enough for IRS.

We, as managers, are to be held accountable for what we do and if America loses this advantage, which is a voluntary situation and decides that every manager is crooked to begin with, then I am certain that managers will take the attitude that if that's the game they want to play then they will play with them.

We request, again, that you do everything within your power to throw out and discard, repeal, or otherwise cause to end this contemporaneous record-keeping process invoked by the IRS as it is nonsensical and unnecessary.

I would expect this type of treatment if we were in a "Nazi" Germany or a communist country, but this type of thing has not nor should not be allowed in the United States of America.

Our morals, ideals, and customs have been the backbone of this democracy and I hate to see laws invoked or regulations established which infringe on and cause changes in these very things that make up the fibre of this great country.

Your assistance and the assistance of your colleagues in repealing these regulations is greatly appreciated by not only this business man but, I'm sure, by all business men who help to produce the sales that produce the profit that produce the taxes that keep this country strong and viable.

Sincerely,

H.E. BUTCHER, *President.*

COPPELL, TX.

To the House Ways and Means Committee:

The new tax law imposes massive and expensive recordkeeping and paperwork burdens in order for businesses to keep their tax deductions for company vehicles and selected property. It will not only impose burdens on my company, but for all local, state and federal governments.

This new law will only cost the taxpayers more tax money to handle the extra paperwork that will be involved. This new burden will not only cost my company, but the cost will have to be distributed through the products and services we provide which will burden the consumer. I do not object to fair taxation, but I do object to excessive and unnecessary recordkeeping requirements.

Thank you,

ROBERT D. ANDERSON.

ATASCADERO, CA.

Mr. JOSEPH DOWLEY,
Chief Counsel, Committee on House Ways and Means, U.S. House of Representatives, Washington, DC.

TO WHOM IT MAY CONCERN: I am writing regarding the "Contemporaneous Record Keeping" which has taken effect Jan. 1, 1985. I am licensed to sell real estate, and would like to convey to you my concern about this required "record keeping".

My automobile and computer are an integral part of by business transactions, but it would be almost impossible for me to log each time either of these were used for business, specifying dates, names, purposes, mileage and time of business use. This would be incredibly time consuming, burdensome and greatly decrease my productivity.

I strongly urge you to consider the legislation now pending (H.R. 531, H.R. 600, and S.B. 260) which would repeal those requirements, and return to prior law which simply required records to substantiate business deductions.

I appreciate your reconsideration of this important issue!

Sincerely,

MICHAEL I. ANDREWS,
Realtor Member of the Atascadero Board.

Letters identical to that above were also received from the following Realtor members of the Atascadero Board, Atascadero, CA: Leslie A. Arnold, Donald B.

Blazej, Steve Holm, Anneth V. Smith, Robert D. Smith, William Thebault, Fred C. Witt, and Beverly Zinn.

ARLINGTON FINANCIAL CORP.,
Richmond, CA, February 24, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. DOWLEY: Regarding the public hearing on the Treasury Department's revised temporary and proposed regulations relating to the recordkeeping requirements for automobiles, etc.; attached is a copy of a letter sent to both the Internal Revenue Service (attn: Mr. Egger) and his boss, Mr. Baker at the Department of the Treasury.

You will note that there are several questions concerning the recordkeeping requirements which need clarification. It would be appreciated if these could be incorporated in the hearings you are conducting at 9:30 AM on March 5, 1985.

A copy of the final report would be appreciated also.

If you have any questions, please do not hesitate to call.

Very truly yours,

MYRON D. KING, *President.*

[Attachment]

ARLINGTON FINANCIAL CORP.,
Richmond, CA, January 18, 1985.

Re Contemporaneous records—auto.
INTERNAL REVENUE SERVICE,
Attn. Director, Washington, DC.

DEAR MR. EGGER: We are confused regarding the regulations on this subject. After attending several conferences on Contemporaneous records, we find that there seem to be many opinions concerning implementation. It would be appreciated if you would review the following and provide answers to the situations described below. Assume in the following that all of the WHO-WHAT-WHEN-WHERE-HOW-WHY information is also provided.

A. Time of recording of data:

1. As shown on attachment number A-1, there is a company stating that the documentation must be recorded within 24 hours of the time it was incurred. Is this correct? If not, is there a specific time limit for recording the information, and what is that time?

B. Method of recording of data.

1. We have been advised that it is permissible to record the data on a portable dictating machine. Is this correct?

2. If B-1 is correct, is it permissible to have this data transcribed on a periodic basis?

3. If B-2 is correct, is it permissible to transcribe this data on a monthly basis? If not, what is the maximum time allowed for transcription?

4. If the data is transcribed by a third party, what requirements are necessary to pass an internal revenue audit?

5. If a third party has a service for entering the data into a computer and provide a periodic print out of same to the originator, is this acceptable?

C. Optional methods of recording of data:

1. Assume the following situation. Tax practioner uses his automobile as follows during one business day: 5 miles commute from home to office. 6 miles from office to client A. 7 miles from client A to client B. 8 miles from client B to client C. 9 miles from client C to office. 5 miles commute from office to home.

a. Is it correct that there is no necessity to record the mileage from home to office or office to home if the auto mileage at the beginning and ending of the year is recorded?

b. There are two methods to record the business mileage. Which of the following are correct:

b1—Recording the odometer mileage at the beginning and end of each of the trips consisting of 6, 7, 8, 9 miles as follows:

b2—Recording the odometer mileage at the beginning of the first business trip and at the end of the last business trip as follows: 8500-8530.

c. Assume the same situation as above except that the tax practioner drives his care as follows: 10 miles from home to client A. 7 miles from client A to client B. 8 miles from client B to client C. 1 miles from client C to home.

Which of the following are correct?

- c1—All of the above mileage (26) is business—26 miles.
- c2—The 26 miles has to be reduced by the 1 mile driven from client C to home—25 miles.
- c3—The 26 miles has to be produced by both the 1 mile from client C to home as well as the 10 miles from home to client A—11 miles.
- c4—The 26 miles has to be reduced by both the 1 mile from client C and the normal 5 miles commute from home to office—20 miles.
- c5—The 26 miles has to be reduced by the 5 mile normal commute from home to office as well as the 5 miles normal commute from office to home—16 miles.

D. Miscellaneous questions.

1. A physician travels from his home to his office, later in the day to the hospital, back to the office, and then back home. He pays for monthly parking and has in and out privileges.

- a. Is the parking totally deductible as a business expense?
- b. If not, what portion is deductible, if any?
- 2. Same as D1 above but the parking is paid for each time used.
 - a. Is the parking totally deductible?
 - b. If not, what portion is deductible?
- 3. Same as D1 above, but the physician is called to an emergency at the hospital during the night.
 - a. Is the trip from home to the hospital and home again deductible as business mileage?
 - b. Is it necessary to reconstruct the mileage so as to show the mileage from the office to home and back to the hospital for the emergency totally as business and the mileage from the hospital to home as commute as described in C1c above?

If you have any questions, please do not hesitate to call.

Very truly yours,

MYRON D. KING, *President.*

[Attachment]

HOW YOU CAN COMPLY WITH THE TAX REFORM ACT OF 1984 AND DEVELOP AN AUDIT-PROOF SYSTEM OF TAX DEDUCTIONS

Tax Reform Act of 1984 States: You Must Record Business Expenses Within 24 Hours or Face the Possibility of Jail.

Congress wants money now. And the IRS has been ordered to collect it from you. The new tax law is effective January 1, 1985. It is tough! The rules are strict and the penalties for non-compliance are scary.

The key to the Tax Reform Act of 1984 is documentation. If you take a deduction and can't prove you are entitled to it, you: lose it; get slapped with a huge fine for thinking of taking it; pay big interest penalties on additional money owed to IRS; may even be indicted for fraud.

TRI is determined not to let any of this happen to you. That's why we created the Tax Reduction Diary to help you support your 1985 business deductions for: automobile; personal computer; travel; entertainment; business gifts; education; club dues.

The law says that any of the above may be legitimate deductions, but if you don't have adequate contemporaneous records, no tax credit or deduction is allowed. The word "contemporaneous" in tax law generally means that you must document the expense within 24 hours of the time it was incurred. Your Tax Reduction Diary is that record.

The Tax Reduction Diary is the Only Known System to Comply With the Record-keeping Requirements of the Tax Reform Act of 1984.

The new law states very specifically the kind of records you need to keep and requires both you and your tax preparer to sign your return under penalties of perjury.

The 1984 Tax Reform Act states, "A return preparer must properly and fully advise the taxpayer of these contemporaneous recording requirements and obtain written confirmation from the taxpayers certifying that contemporaneous records supporting these deductions and credits exist. If the return preparer does not obtain this written certification, the preparer may not sign the return."

[Attachment]

ARLINGTON FINANCIAL CORP.,
 Richmond, CA, February 11, 1985.

Hon. JAMES A. BAKER,
 Secretary of the Treasury, Washington, DC.

DEAR SIR: Attached is a copy of a letter written to the Director of Internal Revenue on 18 January 1985. To date, no answer has been received. If you will review the letter, you will note that there is an immediate need for answers to these questions which have not, to my knowledge, been resolved.

It would be appreciated if you could find out when answers will be available so that we may notify our clients.

If you have any questions, please do not hesitate to call.

Very truly yours.

MYRON D. KING, *President.*

STATEMENT OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC.

Mr. Chairman and Members of the House Ways and Means Committee: It is indeed a pleasure to have this opportunity to testify before this committee on the efforts to amend the "contemporaneous recordkeeping" requirements for automobiles used for business purposes which were addressed in the Deficit Reduction Act of 1984 and recently subject to proposed regulations by the Internal Revenue Service, U.S. Department of the Treasury.

Associated Builders and Contractors, an organization of 18,000 general contractors subcontractors and suppliers, opposes the regulations released by the Treasury Department both on October 15, 1984 and on February 15, 1985 amending the initial temporary regulations issued on January 2, 1985 relating to the valuation of taxable fringe benefits. On January 18, 1985 ABC called for an exemption for the construction industry from the mandatory recordkeeping requirements due to the uniqueness of our industry. Today, we join the myriad of other business, business associations and organizations that believe these regulations are totally unacceptable and create a staggering amount of paperwork—hitting especially hard the small business men and women struggling to comply with these regulations.

Labor-intensive, the construction industry utilizes an extensive amount of business vehicles. While the intent of the current regulations were aimed at providing greater tax compliance for these individuals or closely held corporations which flagrantly abuse the personal use of business vehicles, both our employer and our employees have been caught in the middle of this unnecessary red-tape.

After numerous membership meetings, the ABC Executive Committee, the ABC National Board, comprised of over 170 members, and the ABC National Legislative Committee found the proposed regulations, despite their recent modification, a nightmare totally beyond the original intent of the enacting legislation. Relief from this time-consuming and counterproductive recordkeeping and accounting burden has been the clarion cry from our members to our trade association. Our members are united in their opposition to this onerous and unjust burden on the construction industry. Further, given the interest today in tax simplification, these complex regulations are totally out of step with the need for fair tax reform. Once again, the Federal Government has imposed unacceptable burdensome Federal regulations on honest taxpayers and productive businessmen, with very little benefit to the Government. On the contrary, the expense of compliance with these regulations will create a loss in the pockets of small businesses who can ill afford the accounting assistance necessary for compliance. With an estimated \$150 million increase revenue to the Federal government annually, a \$1,000 per year increase to each business translates into billions in compliance costs. ABC supports legislation to repeal suit 179(b) and restore the prior law—a law with rationale recordkeeping requirements in this area—and to reduce the paperwork burden which has gotten out of hand. The revised rules of February 15 liberalizing those requirements do not provide any appreciated assistance.

When Congress passed the Deficit Reduction Act of 1984 (DEFRA), the Members of Congress and specifically the members of the House Ways and Means Committee and the Senate Finance Committee, attempted to close tax loopholes making the current tax system fairer to all taxpayers. ABC recognizes the hard task which faced both Congress and the Internal Revenue Service these past two years and the continuing efforts which may be made in the 99th Congress. At a time of \$200 billion deficits, any means of tax evasion must be eliminated. Yet, this does not con-

done the "robbing of Peter to pay Paul," which is, Mr. Chairman, what these proposed regulations will do.

In significantly changing the requirements for claiming credits and deductions for automobiles and service vehicles, Congress and the Treasury Department have not only eliminated this means of tax evasion, but have created an entire new set of problems unique to the construction industry, an industry which provides fleets of business vehicles and utility trucks to its employees. The violations of the tax law by closely held corporations were rightly corrected by DEFRA, unfortunately the bind in which these regulations have placed the construction industry cannot be tolerated.

Under the new law, effective January 1, 1985, taxpayers must maintain adequate contemporaneous records to substantiate travel expenses. These records must include: the amount of the expense, the time and place of the travel, the business purpose of the expense and the business relationship to the taxpayer of persons entertained. If a taxpayer does not keep adequate contemporaneous records, no credit or deduction will be allowed with respect to such expenses. This requirement is to be satisfied by the keeping of a log, a journal, diary or other similar record. A separate entry in the log must be made of each business use and should be made at or near the time actually used. Each entry should specify the date of use, name of user, number of miles traveled and the business or investment purpose for the use. These records should be maintained for at least five years after the first taxable year of the use of automobiles due to potential recapture of excess depreciation which may be triggered by a decline in the qualified business use. Any underpayment of tax resulting from claiming credits and deductions not supported by adequate contemporaneous records is subject to the negligence penalty in the absence of clear and convincing evidence to the contrary.

These requirements fall severely on the construction industry—most severely on the small contractor and subcontractor—which is made up of small businesses providing over 80% of America's jobs. While legitimate in scope these newly enacted regulations will have a serious impact and cause serious ramifications on many aspects of the construction industry, resulting in both inflated wages and costs of construction projects.

We can look at this impact in three ways: (1) the increased recordkeeping burden, (2) the type of employee in the labor-market and (3) the kind of activity surrounding construction contracts.

RECORDKEEPING

From the accounting standpoint, the construction industry has its business giants. But the vast majority of its membership are small businesses—contractors and subcontractors who just cannot absorb the increases in the accounting required by these new regulations. The quarterly reporting requirements contained in Sections 3121, 3231, 3306, 3401 and 3501 create a vast amount of paperwork when considering the number of vehicles contained in an employer's "fleet". The quarterly collection of the vehicles logs will be a labor-intensive activity which will be further compounded by the lack of compliance by the vehicle operators (to be discussed below). Unfortunately, this will lead to increases in the cost of bidding projects resulting in increased construction costs nationwide. Additionally, the withholding requirements in the above mentioned sections will lead employers to raise salaries of employees to cover the tax on the vehicle and the tax on the increased salary figure further inflating wages and ultimately the costs of construction projects. The Federal government, which often contracts-out for construction activity, will have to absorb these additional costs, thereby defeating the revenue figure which will be incurred with these new rules. Employers may, in increasing the wages of these employees with service vehicles, be forced to eliminate some of the lower-salaried jobs, thereby causing a loss of jobs—so critical at this time of economic recovery. Already, employers have indicated that there would be no service vehicles for any employees as a means of escaping these recordkeeping requirements only causing disgruntlement among the workforce and a possible loss of valuable and productive employees.

CHARACTERISTICS OF THE EMPLOYEE IN THE WORK FORCE

It is the rule, rather than the exception, for construction companies and in particular, small construction companies to provide service vehicles to their employees, most importantly to their foremen, managers and supervisors. While these individuals are highly skilled workers in their trade, many do not have educations higher than a high school degree, some even ending their formal education at eighth grade. The daily entry requirements are burdensome and quite frankly will not be com-

pleted by the operator of the service vehicle—despite the presence of a log in the vehicle, exposing both the employer and the employee to jeopardy and stiff penalties.

Many construction firms are indeed small businesses that do not have a business office but use their personal home as their headquarters. Providing their employees service vehicles for day use requires that they bring them home with them in the evening—both for security purposes and for maintenance of the vehicles. These are employment-related expenses.

The construction industry is made up of highly skilled craftsmen who contribute only partially to the construction of a facility. Therefore they must travel from construction site to site taking with them, and maintaining, the tools of their craft. Workmen keep with them the tools provided by the employer in addition to their own personal tools (many of which the employer does not provide) which must be transported in a service vehicle and which the employee would not want to leave at any jobsite. It can be assumed that the daily logging of each of these trips would most often be forgotten. Additionally, the construction industry is one in which time is considered money—and the employee often sees productivity rewarded with reassignment to better jobs or worksite—and will therefore, neglect the maintenance of a time-consuming travel log.

The maintenance of logs in business vehicles by construction workers who make many stops in the course of the daily activity creates a safety hazard besides an administrative burden. First by attending to the completion of a log while driving the driver subjects both himself and/or his vehicle to injuries. Further when conducting business of a hazardous nature, he will be dividing his attention away from safety standards subjecting himself to harm.

It would be unfortunate if employers violated another safety law—the 55 mph speed limit—to make up for time consumed in filling out a log.

ACTIVITY SURROUNDING CONSTRUCTION CONTRACTS

Foremen, supervisors and managers must oversee many construction sites, often in a two state area. In addition to their daily site-to-site visits, these workers must plan their more distant travel time in both a timely and energy-efficient manner. This may mean that the individual, on a routine basis, must take his service vehicle from his last stop on day one home and to another site from home on day two, without returning to the main business address of the contractor. Under the current Treasury regulations the business deduction of this type of travel expenses is not allowed. The construction supervisor is more frequently conducting business from his business automobile utilizing mobile phones, obtaining bid specifications and information, traveling from bank to jobsites to equipment suppliers. In the course of any day, these managers may spend a better part of their time in the vehicle rather than in a business office necessitating the logging of each and every trip.

Then there are the service vehicles provided by the employee which function to keep and maintain the construction equipment on-site. It is not rare for one equipment repair specialist to answer 10-15 distress breakdown calls in one day—necessitating 10-15 completions in the business log, by an individual who is not a record-keeping individual.

Many of our vehicles have 2-way radios for productivity purposes. Many of our fleets have vehicles equipped for job purposes which are not conducive or even desirable for personal use. To a great extent travel is from job site to job site on a 24-hour-a-day basis. In fact many of our individual member companies prohibit the personal use, except commuting, of business vehicles.

Quite frankly, service vehicles provided in the construction industry are not the type of vehicles which are subject to the constant abuse of the business tax deduction as seen in other professional closely held corporations. It is highly unlikely that these utility truck operators are the violators that the Congress and Internal Revenue Service were ready to include in the new IRS regulations—yet, unfortunately they have been included and are the least able to afford the compliance costs.

While our system pertaining to business vehicles prior to January 1, 1985 was not a perfect system, it did work for the majority of taxpayers. It is unfair to burden these honest employers and employees to obtain a greater degree of compliance from those dishonest tax avoiders. Unfortunately, quite the contrary will occur. Those hardworking individuals who have a clean record of tax compliance will look for ways to circumvent these new regulations creating an even more severe problem of avoidance. Reasonable regulations will spur reasonable compliance.

There were several safe-harbor provisions contained in the February 15th IRS' regulations which, while an attempt to modify the previous regulations, make the

tax system even less fair. The 70-30 split between business and personal use is a distortion of the actual business/personal split. Unfortunately if a taxpayer choose to adopt a more technically correct version, they cannot waive the recordkeeping requirement and the maintenance of a daily log. A far more acceptable percentage would have been 85-15.

ABC favors tightening the tax code, making it fairer to all individuals. However, upon close review of the regulations for substantiating and deducting travel expenses, the ABC membership is convinced that these requirements would impinge upon the productivity of the construction industry. Therefore, we are pleased that the IRS and the members of the tax-writing committees in Congress are reviewing the hardships placed on the construction industry with these new regulations. The unique travel-related business requirements of the construction industry are not means to "shortchange" the tax code, but rather to run efficient, productive, cost-effective construction companies.

We applaud your oversight efforts today and the attention of the Congress to this issue. We look forward to swift action on the legislation pending to repeal section 179(b) of the 1984 Tax Reform Act.

STATEMENT OF ASSOCIATED LOCKSMITHS OF AMERICA

The Associated Locksmiths of America (ALOA) is the trade association which represents 6,000 locksmiths employing 38,000 workers in 11,000 locksmith shops throughout the nation. The temporary regulations promulgated by the Treasury Department on October 24, 1984, January 7, 1985 and February 20, 1985, with regard to record keeping for road vehicles pose a unique burden on, and causes unnecessary confusion for, the locksmith industry, and therefore should be modified or repealed.

1. LOCKSMITH VEHICLES SHOULD NOT BE DEFINED AS "PASSENGER AUTOMOBILES"

Due to the nature of the locksmith business, most locksmiths use vehicles such as small trucks and vans, to carry tools, supplies and parts to job sites in order to install or repair locks. Even though such vehicles are usually customized to contain a self-sufficient locksmith "shop", they can readily fall within the definition of "passenger automobile" as contained within 26 USC 280F(d)(5) because they are usually 4-wheeled vehicles rated at less than 6,000 pounds gross vehicle weight. Since the Congress delegated authority to the Treasury Department to exempt trucks or vans from this definition, we believe the Department should specifically exempt vehicles, such as locksmith vehicles, which are specifically used to carry out a trade which requires transportation of tools, supplies, parts and a working "shop."

2. LOCKSMITH VEHICLES SHOULD NOT BE CONSIDERED LISTED PROPERTY

Even if exempted from the "passenger automobile" definition, locksmith vehicles could be subject to burdensome record keeping requirements because they could be considered "listed property" within the "means of transportation" language of 26 USC 280F(d)(4). The new February 20th regulations (Section 1.280F-6T) exempt "trucks specially designed for specific business purposes," which is good in that locksmith vehicles which are "specially designed" could be exempted. However, this same section states that it does not apply to vehicles used for commuting. Since some locksmith vehicles, regardless of their design, are small enough so that they could be used for commuting, the regulation should specifically exempt locksmith vehicles.

3. LOCKSMITH SHOULD BE EXEMPTED FROM COMMUTING REQUIREMENTS

Many locksmiths operate on an "on-call basis 24 hours per day, seven days per week. As such, they must bring their vehicles home with them in order to quickly respond to calls. The regulations do not adequately provide for this type of usage, because Section 1.274-6T(c) states that a vehicle "must be kept on the employer's business premises". Moreover, Section 1.276-6T(d) is no relief because it is not available for an employee who is "an officer or a one-percent owner of the employer," and many locksmiths are full or part owners of their small businesses. None of the regulations help ease the record keeping burden of the small, independent business person who is both employer and employee. The regulations should be modified to exempt specifically-designed vehicles which are parked at an employee's home due to the fact that they are required for use 24 hours per day.

STATEMENT OF ASSOCIATED SPECIALTY CONTRACTORS, INC.

The Associated Specialty Contractors (ASC) protest, in the strongest terms, the law and IRS regulations which tax legitimate business use of company vehicles. While there is some incidental, personal value when used for commuting, the tax laws should not discourage such use which is for the benefit and convenience of the employer.

This is not just an issue of backbreaking record keeping. The record keeping could be eliminated and it would still be a bad law. This is also an issue of increased taxes.

ASC is a coalition of eight national associations of specialty contractors, listed in the Appendix. The segments of the construction industry represented by ASC affiliates consist of about 166,000 business establishments with annual sales of approximately 80 billion dollars and with 1.5 million employees. The large majority of these firms are small business enterprises.

Last year, Congress passed the Tax Reform Act of 1984. Among other revisions, it significantly changes provisions affecting the ownership and deductibility of business vehicles and equipment. Internal Revenue service regulations are further increasing the tax and paperwork burden on small business, particularly where so-called "personal" use occurs.

The new rules broadly define "personal" use. Use of a car, van or truck to commute will be "personal" use even if use of the vehicle is for the convenience and benefit of the employer.

Construction contractors maintain a fleet of cars, vans, and trucks to make service calls and to provide an onsite storehouse for tools, parts, and equipment for use at the work sites. It is a frequent and usual practice to require employees to take a vehicle home for any one or more of the following reasons:

- a. Security.
- b. Lack of storage space at the shop.
- c. Availability for emergency service calls.
- d. Increased productivity.

SECURITY

In some construction, it is difficult to maintain security on the job site after work hours. Building materials are stolen and vehicles are broken into or vandalized. When employees take these vehicles home, they park them in driveways and on residential streets in neighborhoods. This is far better security.

If employees stop taking vehicles home, the cost to the contractor for security increases. Either additional security measures must be taken at the job site, or some other secured parking facilities in the area must be found.

The first option increases insurance costs and the second increases storage costs. If the vehicles are returned to the shop each day, there is the additional travel time and cost to and from the job site each day. If the employee does not take the vehicle home, but rather drives first to the storage place of the vehicle, the contractor loses the productive time while the employee picks up the vehicle and takes it to the job site.

LACK OF STORAGE SPACE

Because contractors maintain a fleet of vehicles, they do not always have the space at their shop or place of business to store them. If all the vehicles are returned to the shop then the contractor faces increased expense, either to buy or rent space for vehicle storage.

Many employees are requested to take vehicles home because of lack of space to store them and a business need to provide secure storage. This "personal" use is for the convenience of the contractor. The vehicles and employees are also on call for emergency service, which can be provided more efficiently when employees take the vehicles home.

EMERGENCY SERVICE

Contractors also require employees to take their vehicles home to have them more readily available for emergency service calls. If a consumer calls in the middle of the night that the furnace has gone out, an employee can be called and dispatched readily to make the repairs, since tools and equipment are readily available.

Let us track that same emergency service call, if the service truck is left at the shop. The consumer calls to report "no heat". The contractor telephones an employ-

ee to make the emergency service call. The contractor must go to the shop so that he can unlock the yard where vehicles are stored. Meanwhile, the employee must travel to the shop, pick up the vehicle, and then travel to the consumer's home or business to service the "no heat" call. When the furnace is repaired, he returns to the shop to return the vehicle.

Meanwhile, the contractor either waits at the shop for the return of the vehicle or goes home to return later to again secure the service vehicle. Thus, there is significant time, inconvenience, and cost by even more people to service emergencies.

Since emergency calls are usually billed from the time of the first call to the employee to his return home, there is both a significant increase in inconvenience to the contractor and an increased cost to the consumer. There is also the negative public relations which the contractor experiences by a consumer who believes the contractor is taking advantage of the emergency and price gouging.

INCREASED PRODUCTIVITY

Employees are compensated from when they start work. In our industry, productive work which the company gets paid for does not begin at the office or shop. It begins at the work site. Work sites may be miles away and even in communities other than the office.

If all employees report to my place of business at the beginning and end of the day, contractors lose productive time. Contractors have to pay employees for their non productive travel time to and from the job sites. That increases the overhead and cost of doing business.

However, as small businessmen, we've learned to work smarter! The employee goes directly to the job site and begins work there.

However, he needs tools, parts and equipment to work with. Again, our members have worked smarter. They have put these items in a vehicle. The employee can take part of the "place of business" with him. He can start and end the day without ever reporting to the central "place of business", the office and shop. As a result, he can do more productive work in a day which the contractor can bill out. That saves overhead and even increases income to make the company more competitive. Companies have increased productivity when employees begin work at the job site rather than at the shop.

UNFAIR TAXATION OF PERSONAL USE

To permit this law to continue is just another example of ridiculous government regulation sapping productivity, imposing unnecessary cost, and creating inconvenience for the small businessman. This cost is passed on to the consumer.

If employees continue to take vehicles home, that "personal" use will be taxable to the employee. Some employees have already indicated that they will not take vehicles home under those conditions. Employees who do would be subject to taxation and withholding on the value of the so called "personal" use.

The rules require a contemporaneous log or diary be kept on each use of the vehicle where any "personal" use is involved. For a vehicle that goes from job site to job site or is used by several different employees during the day, that is an extremely burdensome and time consuming chore. It takes away from the productive time which should be spent on the job. Failure to keep the contemporaneous record presumes that total usage is personal, which increases the employee's tax burden and eliminates the company's legitimate tax benefits.

Thousands of employees are going to come to a distinct shock when they find greater withholding taxes based on the value of compensation of company vehicle use. This was use for the convenience of the contractor. Severe repercussions will be felt in personnel administration and employee and labor relations.

The rules also reduce the tax credits and depreciation which can be taken for vehicles. The investment tax credit and depreciation must be reduced proportional to the percentage which a vehicle is used for "personal" use. The use of each vehicle will vary and each will require separate calculations of the proportions of business and "personal" uses.

To further document the impact on small business, attached is some material provided by one of the Associated Specialty Contractors member associations. As a member of the National Electrical Contractors Association, Muska Electric has calculated the financial impact these rules will have on their company, which run from 25 percent to 89 percent of income depending on how the company complies.

The tax credits and depreciation schedules were put in place to encourage investment and business growth. Reducing their use reduces the incentive and is counter-productive.

Recently, the Internal Revenue Service announced that it is issuing new rules with standard formula to be used for allocating business and personal uses in lieu of the record keeping. For the construction industry, those are of little value.

While certainly it could relieve contractors and their employees from onerous record keeping, it does not solve the basic problem. The basic problem is that vehicles are used for commuting at the request of and for the convenience of the employer. They are serving legitimate business purposes of the small businessman in his effort to hold down business expense and maintain productivity.

CONCLUSION

The first strike against small business contractors is the backbreaking contemporaneous recordkeeping. This paperwork forces contractors and employees to perform countless non-productive hours to help the IRS collect taxes it doesn't deserve. The cost of recordkeeping should vastly exceed the tax collected.

The IRS has graciously announced that small businesses can avoid the record-keeping by following standard formula. Thus, a small business has a choice of keeping extensive records or using a formula that may limit the tax incentives the businessman is entitled to. Both are unacceptable.

In fact, the IRS is attempting to get a double whammy tax bonanza tacked onto the backs of business, particularly small businesses who can least afford it. Small business loses part of the value of tax credits and depreciation or small business will have to pay higher wages to compensate for the employee's higher taxes.

Some may call it revenue enhancement. We call it a tax increase . . . on contractors and other small businesses.

In baseball, three strikes and you're out. While the government is trying to promote economic growth through productivity, it should not be reducing productivity through such laws. Businessmen should have the flexibility to run their companies to get maximum productivity. The law and IRS regulations discourage vehicle use for the convenience of the employer even though it is in his effort to get the best productivity.

We appreciate the efforts of those Congressmen, including members of this committee who have cosponsored legislation. We believe that the changes in the law which require record keeping and increased taxation are outrageous and Congress should repeal them immediately.

APPENDIX.—MEMBERS OF THE ASSOCIATED SPECIALTY CONTRACTORS

Mason Contractors of America.
 Mechanical Contractors Association of America.
 National Association of Plumbing-Heating-Cooling Contractors.
 National Electrical Contractors Association.
 National Insulation Contractors Association.
 National Roofing Contractors Association.
 Painting and Decorating Contractors of America.
 Sheet Metal and Air Conditioning Contractors National Association.

[Attachment]

MUSKA ELECTRIC Co.,
 Roseville, MN, January 29, 1985.

N.E.C.A. NATIONAL,
 Bethesda, MD.

Attention: Robert L. White.

DEAR MR. WHITE: This letter is in response to your inquiry on the impact of the mileage reporting requirements on Muska Electric Company. Muska Electric is an electrical contractor employing on the average of 110 Union electricians. Our business was built doing small jobs that average about 100 hours of an electrician's time to complete.

Several years ago, we found it was to the Company's advantage to purchase service vans and stock them with material and tools allowing the electrician to drive to the job, rather than having him call in for the material and tools needed on the jobsite. At that time, we required the electrician to report to the shop to pick up the van and return it each night. After further review, we noticed it was costing the customer an hour, to an hour and a half every day to have the van come to the shop. We made the decision to have the electrician take the van home and report directly to the jobsite. This system worked out nicely for the Company as we were able to satisfy our customers by giving them more service for the money. We never

looked on this as providing much of a fringe benefit to the electrician because the van had large company lettering on the sides and, quite frankly, is somewhat of an eyesore in a residential driveway.

The new interpretation of the revenue code by the Internal Revenue Service has a very drastic effect on the efficiencies which Muska has developed and fine-tuned over the years. Now we are in a position whereby we have three alternatives—all of which cost the Company considerable sums of money.

1. The first alternative is to have the electrician fill out the mileage log and charge him for the personal commuting miles. Our records show the vans cost about 35¢ per mile to operate, while a company car cost 25¢ per mile. Therefore, we will have to charge the electrician 10¢ per mile more than the white collar worker who has a Company automobile.

In addition to having to pay a higher mileage charge, the electrician has the potential to have more personal miles as defined by the code than the white collar worker. This is caused by the fact that the white collar worker reports to the shop first thing in the morning which, in most cases, is less than five (5) miles; whereas, the electrician must go where assigned in the jurisdiction which can easily be thirty (30) miles from his home. This has been brought up by the electricians on many occasions, and, to date, one electrician has turned in his van and four others are seriously considering doing the same.

The mileage logs, under this arrangement, would be prepared on Company time and would require time on the part of the office staff to compile the records. We estimate, on a conservative basis, the lost time would total \$81,510 per year plus added paper costs of \$3,400 a year. (See attachments for detail of costs.)

2. Our second alternative would be to insist the vans be picked up and brought back to the shop each night. Under our Union agreement, electricians would report to the shop at starting time and be back at the shop at quitting time. Once again, assuming the job assigned the electrician can be up to thirty (30) miles from the shop, we estimate the commuting to and from the shop and the jobsite would take about one (1) hour per day. This would cost either the customer in lost service, or Muska Electric in productivity, \$302,380. (See attachments for detail of costs.) In this case, the electrician would not be charged for any personal use of the vehicle; however, he would still be burdened with the record keeping requirements.

3. Our third alternative would be to ignore the whole reporting requirement and not deduct any truck expenses or take any investment credit on our vans. This would cost Muska approximately \$108,700 per year in additional income taxes. (See attachment for detail of costs.) This would make the electrician happy as it would reduce his record keeping and would allow him to continue as usual.

As you can plainly see, at best, none of these situations are acceptable to Muska Electric as the costs run from 25% to 89% of our average income for the past four (4) years. Now the question arises—what does the Federal Government derive from this? Based on the fact that at best, the electrician will include \$4.00 per day as income (i.e., all trucks are used for commuting only) and, it appears, the average electrician is in the marginal tax bracket of 30%, the taxes generated will amount to \$14,352. (See attachment for detailed analysis.) This revenue, however, will be more than off set by loss of income taxes from either Muska Electric or its customers.

Sincerely,

RANDOLPH C. LUHRS,
Controller.

Muska Electric Co., cost of record keeping

Electrician time spent recording mileage records (¼) one quarter hour per day for 46 electricians, or 57.5 per week at \$25.00 per hour.....	\$1,437.50
Office staff time spent collecting mileage records, compiling the totals, and verifying their completeness. 10 hours per week at \$13.00 per hour	130.00
Weekly costs of recordkeeping	1,567.50
Yearly costs.....	81,510.00

Muska Electric Co., bookkeeping costs for record keeping and accounting

Yearly costs:	
Computer programming for payroll charges—80 hours at \$35.00 per hour	\$2,800.00
Conversion of payroll checks (i.e., old checks which would be destroyed because they cannot record mileage charge).....	400.00

Cost of forms to be completed by electricians.....	200.00
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Total yearly cost.....	3,400.00
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Muska Electric Co., cost of recordkeeping and lost time assigning trucks kept in shop

Electrician time spent commuting from the shop to the jobsite and back again, recording mileage logs, one (1) hour per day for 46 electricians, or 345 hours per week at \$25.000 per hour ¹	\$5,750
Office staff time spent collecting mileage records, compiling totals, and verifying their completeness—5 hours at \$13.00 per hour.....	65

Weekly Lost Time and Recording Costs.....	5,815
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Yearly Cost.....	302,380
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¹ Our typical work territory may range from up to 40 miles from the shop with the average job being at least 20 miles from the shop.

Muska Electric Co., costs no deductions taken by the company

Van mileage for nine (9) months.....	482,363
Annualized miles.....	x12/9

Annualized miles for vans.....	643,151
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Operating and maintenance costs 643,151 miles x 19¢ per mile.....	\$122,200
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Depreciation expense.....	101,200
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Total expenses not deducted.....	223,400
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Marginal tax rate (pct).....	46
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Additional taxes to be paid.....	102,764
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Investment tax credits cost (\$506,000 x 6% ÷ 5 years).....	6,072
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Total cost to company.....	108,836
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Muska Electric Co., van recordkeeping effects on company profits

Average income for past four (4) years.....	\$339,650
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Cost of alternatives:	Percent of income
1. \$81,510.....	24
2. \$302,380 (¹).....	89
3. \$108,700.....	32

¹ Under this situation, we would obviously raise our selling price.

Muska Electric Co., van costs per mile

Operating and maintenance expense per mile (see detailed listing).....	Cents 19.0
Depreciation costs per mile (see detailed listing).....	15.7

Total cost per mile.....	34.7
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Muska Electric Co., depreciation cost for the 9 months ending Dec. 31, 1984

Assumptions:

Average vehicle fleet.....	46
Average vehicle life (yr).....	5
Average vehicle cost.....	\$11,000

Yearly depreciation:

Cost.....	\$11,000
Vehicles.....	x46
Years of service.....	506,000 ÷ 5

Yearly depreciation.....	101,200
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Cost per mile:

Yearly depreciation.....	101,200 x $\frac{1}{2}$
Depreciation for 9 months.....	75,900

Depreciation \$75,900 divided by van miles ¹ 482,363 equals 15.7¢ per mile cost.

¹ This represents total miles driven by service vans only.

Muska Electric Co., vehicle maintenance and operations expense for the 9 months ending Dec. 31, 1984

Vehicle parts	\$19,133
Outside vehicle repairs	8,740
Gasoline and oil	60,758
Insurance and license	8,060
Mechanic wages	24,000

Total vehicle expense 118,089

Cost per mile driven: \$118,089 divided by 621,059 ¹ equals 19.0¢ per mile cost.

¹ This represents total miles driven by all company vehicles. (This is done because no detailed records are kept which separate company automobiles.)

Muska Electric Co., additional taxes raised by charging electricians

46 electricians at \$4.00 ¹ per day or \$20.00	\$920
Weeks in Year	x52

Taxable Income	47,840
Effective Tax Rate (pct)	30

Tax Revenue Generated 14,352

¹ Note that Company policy states vans may be used personally for commuting purposes only.

Muska Electric Co., service van material and tools listing

A typical Muska Service Van contains the following list of materials and tools: 1500 different items of material which includes, but is not limited to wire, pipe connector, fittings, cable, boxes, fuses, ballasts, locknuts, knockout seals, bushings, washers, nipples, switches, plugs, relays, timers, cover plates, straps, breakers, tape, scotchlocks, clamps, couplings, screws, and nails. All of these items come in several sizes, shapes, makes, and colors and must be stocked on a service truck.

Standard tools on a truck consist of the following: 4 ft. Ladder, 6 ft. ladder, 8 ft. ladder, 24 ft. ladder, ½' pipe bender, ¾" pipe bender, 1" pipe bender, 1¼" pipe bender, ¾" variable speed reversible drill, ¾" hammer drill, ½" angle hammer drill, 100' fish tape, 25' extension cord, 50' extension cord, 100' extension cord, amprobe, first aid kit, hard hat, 2 pair safety glasses.

ATI,
Baltimore, MD, February 2, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. DOWLEY: I am offering this Statement for inclusion in the written record of the House Ways and Means Committee's hearing, on March 5, 1985, on the recordkeeping requirements for automobiles and other property.

As a small business owner with 30 employees and various automobiles and trucks, I am truly annoyed at the burdensome and time-consuming requirements of contemporaneous recordkeeping.

First, most of the employees who drive our vehicles are unskilled, "bluecollar" type individuals and for every time they remember to log an entry, they forget one. Vehicles are jockeyed around, record books are brought in for an employee to fill out while the next person may hop in the same vehicle and go off on a different task. Here it is February 21st and one book has already been lost; one vehicle has three books completed!

Like every other tax requirement, the honest folks will abide by them and keep the records and do everything they are supposed to do. The dishonest ones will surely find ways around every requirement they dislike. Ultimately, the burden falls on the honest individuals who painstakingly comply with the tedious tasks assigned, pay their dues, complain betterly to themselves and their neighbors, and wonder why "somebody doesn't do something to change this awful mess".

Please scale down these recordkeeping requirements. We are already overburdened with paperwork. If it's employee, employer fringe benefits you are aiming at, shoot squarely at the target, the fallout is unbearable!

Sincerely,

LYNN F. BEATTIE,
Vice President.

ATKINS BROS EQUIPMENT CO., INC.,
Grand Prairie, TX, February 25, 1985.

MARTIN FROST,
Longworth House Office Building,
Washington, DC.

DEAR MR. FROST: We appreciate your support and the fine job of following up on the I.R.S. regulation concerning business and personal use of automobiles.

We want to go on record as supporting a vote to repeal this requirement.

Thanks again for giving us the chance to voice our opinion.

Sincerely,

R. W. ATKINS.

STATEMENT OF HON. CHET ATKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE
OF MASSACHUSETTS

Mr. Chairman, members of the Committee, I am pleased to have this opportunity to present to you my views, and those of some small businessowners from my area, on the Internal Revenue Service's regulations regarding the record-keeping requirements for the use of vehicles for business purposes.

Let me say, first of all, that this is the first statement I have submitted to any House Committee expressing my views on a matter of public policy. I'm pleased that it is on the subject of making the government less of a hindrance in the efficient operation of the economy. How government and the private sector relate to each other is critical to the health of our economy. I firmly believe that the role of government must be to act as a partner with the private sector when we can be helpful, to regulate excesses of powerful interests when such action is necessary to protect the public interest, and to avoid saddling businesses, and especially small businesses, with senseless requirements that increase the cost of doing business without contributing to the public good.

The regulations that IRS adopted on the record-keeping requirements for business vehicles are, in my view, a classic case of government run amok.

It didn't have to be that way. The provision passed by the Congress requiring that "adequate contemporaneous records" be kept was aimed at two areas of taxpayer noncompliance. The first problem was that taxpayers who own their own vehicle were overstating the business use of the vehicle and claiming excessive tax deductions. The second was that in cases where vehicles were provided to employees by their employers, the income attributable to personal use of the vehicle was being understated.

I don't believe anybody would take issue with the congressional intent in taking that action. Our tax system is based on the notion that everybody should pay his or her fair share. And we now know, with some \$90 billion in revenue being lost to tax fraud and the underground economy, people are losing confidence in the system. That's a perfectly reasonable reaction, and it's why the subject of reforming the tax code is picking up such momentum.

But it's ridiculous that at the same time we're all talking about ways to simplify the tax code to make it more comprehensible and fair to the average taxpayer, the IRS has put forth regulations that are incomprehensible and impose grossly unfair obligations on people who use cars and trucks in their businesses.

The IRS basically took a well-intentioned attempt to increase compliance with the law and turned it into an all-out assault on honest businesspeople. In the name of collecting an estimated \$150 million in revenue, IRS imposed a huge paperwork burden on businesses and individuals that has been conservatively estimated at \$3 billion, with some estimates as high as \$7 billion. At a time when we need to increase public confidence in government, some three million businesses have a new reason to think the government is not their friend.

I've heard from many small businesses in and around my district on this matter, and their letters demonstrate just how serious a problem these IRS regulations present.

A company that specializes in high voltage emergency testing and repair work needs its employees to be on call 24 hours a day, 7 days a week. In order to be as prompt as possible in responding to calls, employees are permitted to take company vehicles home. The company has examined alternative methods of doing business, including having central areas where people could drive to pick up a vehicle before leaving for a job. They found that such a change would increase their costs by eight to ten thousand dollars a year. And in addition to the increased cost from the change of procedures there is the burden of keeping the day-to-day records.

I think the president of the company reminds us of a very practical reality when he writes, "we find that our people consistently forget to keep track of their mileage. I am not sure what kind of a blunt instrument I would need to get this done!"

The Massachusetts Council of Construction Employers raised, among other issues, the problem of theft or vandalism that faces companies if vehicles, mainly vans and trucks, are left on the job site overnight. They also mention the likelihood that severe repercussions from this policy could be felt in the areas of labor-management relations and personnel administration if sharp changes are forced in the behavior of employees who have had access to company vehicles for personal use.

Finally, I heard from the owner of a flower and gift shop in my district. I think I'll let the shopowner's words speak for themselves. She wrote, "The regulation recently proposed by the IRS imposes an impossible record-keeping burden on small businesses such as ours. . . . We believe this IRS regulation could significantly increase our cost of doing business and even (affect) our ability to stay in business."

These three letters are typical of the dozens I've received. They demand relief, and they deserve it. Obviously Congress did not intend to impose that kind of burden on small businesses. Nobody excuses tax abuse. But you can't address tax abuse on the part of a small minority by inflicting new and excessive paperwork burdens on thousands of honest business people. Excluding procurement matters, the IRS already accounts for almost two-thirds of all government paperwork requirements for small businesses. We have an obligation not to add to that burden unless it's absolutely necessary.

These regulations on the use of business vehicles aren't necessary, or even useful. They're a nuisance. I urge the committee to scrap them and to find an alternative way to achieve the total set in last year's legislation consistent with the limited, legitimate objective of curbing tax abuse.

STATEMENT OF DONALD A. RANDALL, ON BEHALF OF AUTOMOTIVE SERVICE COUNCILS, INC.

The IRS contemporaneous recordkeeping requirements for employee use of business vehicles represents a costly burden on small business. Automotive Service Councils, the largest national trade association representing independent repair shops, believes that our members contribute to the vitality of the nation's economy while concurrently serving the interests of the communities in which they operate. The contemporaneous recordkeeping requirement will force ASC members to divert their resources from their present productive application and instead allocate such resources to the area of additional recordkeeping. This unproductive trade-off serves neither the best interest of our nation or the communities across this nation in which ASC members provide important repair services.

IRS has stated its intent to modify this requirement, however, it makes no sense to amend a bad law. ASC urges the repeal of the contemporaneous recordkeeping requirement for company owned vehicles. This requirement is incongruous with the goal of this Administration—the growth of a dynamic economy. Furthermore, this rule is inconsistent with the stated conscience of Congress. Congress passed the Paperwork Reduction Act of 1980 which, as public law, has eliminated approximately 477 million hours of annual paperwork for individuals and businesses. Congress has stated its explicit belief that small businesses should work for themselves serving their customers rather than working for the government completing federally required paperwork.

ASC recognizes the underlying concern which IRS is trying to address. Namely, some employees abuse the use of company owned business vehicles. Although ASC sympathizes with IRS's concern, the contemporaneous recordkeeping requirement penalizes companies whose employees comply with the law. In aggregate, the eco-

nomic costs of this requirement certainly outweigh the potential benefits it will provide.

Ironically, the contemporaneous recordkeeping requirement will be counterproductive for the Treasury. For every one instance where an employee is forced to pay additional taxes because their excessive use of a company owned vehicle is considered a taxable fringe benefit, there will be hundreds of cases where the tax base of companies will be reduced due to the reallocation of resources into the unproductive activity of recordkeeping. In effect, this provision will not represent a windfall for the treasury but instead represents a draw on already strained federal resources. Small business and the nation cannot afford any contemporaneous recordkeeping requirement.

Automotive Service Councils appreciates the opportunity to present this written statement, for the record, to the House Ways and Means Committee. ASC's interest in seeing the contemporaneous recordkeeping requirement repealed is not parochial. As represented by the diversity of individuals and associations presenting testimony to this committee today, repeal of this rule is in the best interest of small business and the national economy.

AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION,
Chicago, IL, March 4, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, House Ways and Means Committee, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN ROSTENKOWSKI: On behalf of the Automotive Service Industry Association, I want to express our appreciation to the House Ways and Means Committee for holding these timely hearings and for the opportunity to express the views of the automotive aftermarket on the issue of tax recordkeeping requirements for business use of motor vehicles.

The Automotive Service Industry Association (ASIA) is the automotive world's largest and most comprehensive organization. Its membership encompasses more than 8,500 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, automotive electric service distributors, manufacturers' representatives, manufacturers and remanufacturers of automotive replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories.

The recordkeeping rules for deductible motor vehicle expenses promulgated by the Internal Revenue Service impose time consuming requirements which are counter-productive, cumbersome and unnecessary. ASIA voice its strong objections to IRS when the rules were originally proposed, pointing out that there are numerous other means by which business use can be established that would not present such an undue burden. The costs and burdens imposed by the IRS rules are disproportionate to any tax revenue benefit that can conceivably result from implementation of the rules.

The response of the automotive aftermarket industry has been overwhelming. Members of our industry have joined in the strong objections voiced by every taxpayer segment, that the IRS rules are self defeating and create a nightmare of paperwork which substantially interferes with the conduct of business.

The Internal Revenue Service has taken some action to make the rules less onerous, but the revisions to the rules result in only partial relief and do not solve the problem. ASIA is pleased that an attempt has been made to alleviate the problem but it continues to believe that a general repeal of the appropriate sections of the law is absolutely necessary.

It is the law itself that is the problem. The law specifically requires that a taxpayer substantiate a business use deduction by "adequate, contemporaneous records." Prior law required substantiation by adequate records or by sufficient corroborative evidence, a much more reasonable requirement.

The problem is not going to disappear unless Congress acts to repeal the adequate contemporaneous recordkeeping requirements for business use of motor vehicles. The IRS may issue new rules which reduce the harshness of this particular provision of the law, but these new rules may also be reconsidered at a later date and even that slight reduction of harshness may be eliminated.

Legislative action both appropriate necessary. The confusion and uncertainty in the business community created by the inclusion of the contemporaneous language in the Internal Revenue Code must be reversed. ASIA strongly urges immediate action to repeal the adequate contemporaneous recordkeeping requirements in the law.

We respectfully request that this letter be made a part of the hearing record and thank you for giving us this opportunity to express our views on this important matter.

Respectfully submitted.

JOHN W. NERLINGER,
President.

STATEMENT OF HON. CHARLES E. BENNETT, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF FLORIDA

Mr. Chairman, I would like to thank you and the other Members of the Ways and Means Committee for this opportunity to share with you the concerns of my constituents over the recently enacted laws requiring "adequate contemporaneous records" for business vehicles.

Since the beginning of the year I have been receiving a continuous flow of letters in opposition to the new procedures. While I strongly support legislation to close loopholes in our tax system, I also recognize that we must not at the same time penalize those taxpayers who faithfully abide by the laws and regulations of this country. In our haste last year to catch those individuals who were falsely claiming deductions or credits for the business use of vehicles, we failed to accurately assess the impact our proposal would have on those businesspersons who honestly report such use.

The new IRS automobile recordkeeping regulations force honest businessmen and women to keep time consuming and unnecessary records in order to deduct the proper percentage for their vehicles, while the 70% to 80% automatic deductions are available to those individuals whom the regulation was designed to catch. We must eliminate this unnecessary and unfair burden we have imposed upon honest taxpayers.

Your hearing on this subject is the first careful step that will lead to a solution to this problem. I hope you will take into consideration not only businessmen and women who are taking unfair advantage of the tax system but also those who pay their fair share of taxes year after year.

Thank you again for the opportunity to testify before your hearing.

STATEMENT OF HON. SHERWOOD L. BOEHLERT, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW YORK

Mr. Chairman, I thank you very much for the opportunity to present this testimony on the auto record-keeping regulations we have heard so much about. I commend you for acting swiftly to address the issue. I would also like to take this opportunity to thank all of my colleagues who have been so active in promoting legislation to rid the tax code of these ridiculous regulations.

Mr. Chairman, the case before us is a classic example of a Congressional slip-up made worse by bureaucratic bungling. Congress tacked the provision requiring "adequate contemporaneous records" into the Deficit Reduction Act of 1984 without discussing the idea in either of the tax-writing committees, and then left it up to the IRS to write in the details. Will wonders never cease?

The original IRS regulations required a journal with separate entries made every time business property, such as an auto, truck, or even a personal computer, is used for any purpose. The entries have to include the date of each use, the name of the user, the number of miles driven or the amount of time used, and the specific purpose of the use. Any personal use of the vehicle, such as a run to the McDonald's for lunch, or a drive into town for a haircut, would have to be equally well-documented.

Now, in response to the flood of justifiably angry mail that you and I and the Treasury have received, the IRS has "simplified" those record-keeping requirements. Now we have four different categories of usage, each with its own definitions, rules, requirements, and limits. Some simplicity! My tax returns are easier to understand.

Mr. Chairman, the hassles of complying with these regulations fall not just on a major corporation like AT&T, with more than 22,000 service vehicles on the road—and I ask you to consider the enormous cost that the consumer would pay to keep track of all those vehicles—they also fall on every farmer with a pickup truck, every salesperson, electrician, plumber, and repair person with a car or truck, and on every young entrepreneur with a new personal computer. The burden falls heaviest on those small businesses that are the backbone of our economy, and the spearhead of our economic recovery.

My good friend and colleague from New York, Mr. Horton, chaired the Commission on Federal Paperwork from 1974 to 1977. At the conclusion of the Commission's review of federal paperwork, Mr. Horton said the following words which fit this situation so well. He said:

" . . . The vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering . . . national goals. However, these people can be frustrated by a Government which, in their view, does not trust them. . . . *Countless reporting and recordkeeping requirements . . . have been instituted based on what we view as a faulty premise that people will not obey laws unless they are checked, monitored, and rechecked.*"

How perfectly those words describe my feelings today.

Our constituents do not have the time to keep detailed diaries for the federal tax collector! The average American pays his fair share of taxes and obeys the law, and doesn't need this Big Brother-style harassment to keep him in line.

That's why I urge this committee to quickly approve legislation that would repeal that provision of the Tax Reform Act of 1984 which calls for "adequate contemporaneous records." We made the original mistake—now let's fix it.

Thank you, Mr. Chairman.

ARLINGTON, TX, February 28, 1985.

Congressman MARTIN FROST,
24th District, Texas, House of Representatives, Longworth House Office Building,
Washington, DC.

DEAR CONGRESSMAN FROST: I understand that the House Ways and Means Committee will be holding a public hearing on the new IRS regulations regarding the requirement to keep "adequate contemporaneous records" for automobiles and certain other vehicles. I also understand they will accept written comments from the public. Will you please forward this to the committee so they can have the following comments for their records.

In my opinion, most Americas are not trying to avoid the payment of any taxes they justly owe. For those that are, there should be enough laws on the books to penalize and discourage them if the laws are enforced.

The recordkeeping requirements for automobiles is too burdensome and complex and should be repealed altogether. The amount of paperwork and man-hours required to comply with this directive would be staggering for the individual and companies involved as well as the IRS.

We are already hobbled by excessive federal regulations and I again ask that you support me in getting this IRS regulation repealed.

Thank you.

JOHN BOONE.

Letters identical to that above were also forwarded by Congressman Frost from the following:

Richard W. Bushman, Arlington, TX.
Wayne Harper, Arlington, TX.
Larry Heider, Arlington, TX.
Garry L. Horton, Arlington, TX.
Kurt Kleinsorge, Grand Prairie, TX.

STATEMENT OF HON. FREDERICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF VIRGINIA

Mr. Chairman, I would like to commend you and the members of this Committee for responding to the concerns of millions of American business men and women, by holding these hearings to examine the proposed modifications to Internal Revenue Service regulations mandating contemporaneous recordkeeping requirements for the business use of automobiles and trucks. I appreciate having this opportunity to share with you my concerns on behalf of hundreds of business men and women throughout my district in Southwest Virginia.

I share the Committee's goal of restoring fairness to our federal tax system and the American taxpayer's trust in the system. Public Law 98-369, the Deficit Reduction Act of 1984, attempted to close loopholes and reduce noncompliance in the system which threatened that sense of fairness. However, I share our business community's concern that the new IRS requirements implementing several provisions of the 1984 Act impose unnecessary paperwork burdens on businesses and are counter-

productive. In fact, the unintended effect of these regulations may well be a drain on our nation's business resources and productivity which we can ill afford.

The new regulations require that detailed, up-to-date records be kept by the taxpayer which document the exact amount of business use of a vehicle. As a result, daily logs must now be kept by businesses indicating the exact mileage of each business or personal trip, all expenses incurred for the operation of the vehicle, the purpose of the trip and the name of the driver. An entry must be made every time the vehicle is driven. Previous law required only that sufficient records and receipts be maintained or be reasonably reconstructable to document claims for business deductions.

I am of the view that the imposition of these paperwork requirements on the majority of honest taxpayers in order to eliminate the abuses of a few companies and individuals will force businesses to divert attention from productive business activities. Moreover, I do not believe that such strict requirements will materially improve compliance with Internal Revenue Code requirements for deductions associated with business usage of vehicles.

Last month, in response to the tremendous public outcry against the proposed regulations and the opposition of almost 200 of our colleagues in Congress, the IRS announced revisions to the recordkeeping requirements. The modified regulations do address the concerns of many farmers, sales and service personnel and those individuals who do not use business automobiles for commuting purposes; however, unnecessary recordkeeping burdens remain for the majority of honest American taxpayers affected by the new rules. The proposed modifications to the IRS regulations are insufficient. Further action by this Committee is required.

I have joined a number of my colleagues in cosponsoring H.R. 531, legislation to repeal the excessive reporting provisions of the Act. This measure, introduced by Rep. Beryl Anthony, will restore the more modest recordkeeping requirements of prior law.

I urge the Committee's prompt favorable consideration of H.R. 531. It will relieve our nation's businesses of these unnecessary recordkeeping requirements. The federal government should be a partner, not an adversary, in our efforts to improve business efficiency and the American economy.

WASHINGTON, DC, March 6, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Longworth House Office Building, Washington, DC.

DEAR MR. DOWLEY: Our law firm is writing on behalf of the Brick Institute of America "BIA", a non-profit trade association located in Reston, Virginia. BIA has as members over 90 brick companies representing approximately 75% of the nation's annual brick production.

The reason for this letter is to submit comments for the printed record of the Hearing of the Committee on Ways and Means on the Department of Treasury's Recordkeeping Requirements for Automobiles and Certain Other Property. BIA strongly supports H.R. 531, a bill to repeal § 179 of PL 98-369, the Deficit Reduction Act of 1984 (The Act). This bill would eliminate the contemporaneous recordkeeping requirements.

In prior comments to the Department of Treasury, BIA has advocated an easing of the administrative burden which results from compliance with the recordkeeping requirements. On February 20 the IRS revised its requirements in an effort to ease this burden, however BIA members strongly believe that the requirements are still unduly burdensome. For example, the rule changes do not provide an adequate definition of "sales and services." It still requires business people to maintain burdensome records to prove that business use is higher than 70% for automobiles and 80% for trucks or vans. The rule also fails to recognize that people doing similar jobs have different patterns of business use of vehicles.

BIA members believe very strongly that the recordkeeping requirements should be repealed so that the standard of proof would revert to the previous requirement that taxpayers produce "adequate" proof of their claim of business use of vehicles. BIA recognizes that Congress has a legitimate concern in addressing noncompliance. However, placing an unreasonable administrative burden on all businesses of every size and on their employees appears to be overkill. It may even adversely affect worker productivity.

BIA urges the Ways & Means Committee to advocate the repeal of the adequate contemporaneous recordkeeping requirements under § 179 of the Act. The Commit-

tee could then study whether taxpayer noncompliance is sufficiently broad to require more than "adequate" proof.

Respectfully submitted.

DAVID C. EVANS,
Counsel, Brick Institute of America.

STATEMENT OF SHERWYN E. SYNA, MANAGING DIRECTOR, BUREAU OF SALESMEN'S
NATIONAL ASSOCIATIONS

On behalf of 20,000 traveling sales representatives who are compensated by commission and pay their own business travel expenses, we wish to address the temporary income tax regulations relating to the requirement of Section 274(d)(4) (as amended by the Tax Reform Act of 1984), and as modified and issued by Internal Revenue Service on February 7, 1985.

Specifically, we will address those portions dealing with adequate contemporaneous records for business travel and records for automobiles and certain other vehicles used in business travel.

The interest of BSNA in this matter is intense. Our members represent manufacturers of apparel, accessories, shoes, and toys. In pursuit of their livelihood, these small business people drive 30,000 to 60,000 or more miles per year. Most of their vehicles are automobiles designed primarily for passenger use which have the largest trunks available. Others, and the number is growing, have vans, mini-vans or mobile homes outfitted as showrooms for their work.

Regardless of the type of vehicle they drive, it is their office and carrier of perhaps more than 1,000 pounds of samples.

Traveling 45 weeks per year is costly. Bureau members are conservative in their expenditures, yet obviously have a much higher-than-normal ratio of business travel expenses to income. IRS routinely audits or, perhaps better stated, over audits, our members more frequently than taxpayers with lower ratios. In anticipation of an audit, therefore, sales representatives generally keep much-better-than-normal records and substantiating documentation.

The purpose of the automobile tax law adopted by the Congress in 1984—to eliminate abuses—was certainly meritorious.

Congress's objective got lost, however, in the subsequent rush by the Treasury Department to tax unreported fringe benefits. And this objective was buried by hastily drawn recordkeeping regulations that were onerous and extremely burdensome.

The hue and cry from taxpayers who do not wish to become IRS's bookkeepers or to turn their accountants into policemen was great, understandably. IRS rightly responded by modifying certain of its proposals as is being discussed at today's hearing.

The vast majority of those members of Congress who voted for the Deficit Reduction Act of 1984 failed to consider the potential impact of the addition, in Conference Committee, of the word "contemporaneous." This is easily understood in view of the length of the document—6,500 pages—and the complexities of tax law.

The Congress rightly wanted to limit the depreciation and investment tax credit available to those providing the car and the unreported benefit to the operator. Appropriately, there was substantial support for the requirement that a vehicle be used for business at least 50 percent of the time to be eligible for ITC and Accelerated Cost Recovery System Depreciation.

For the small business person who engages in extended business travel and depends upon a business vehicle for a livelihood, the regulations issued by IRS in October, 1984 were so involved and time consuming as to constitute "busy work." They did no more to document actual usage than do the traditional recordkeeping requirements.

Anyone who wants to bend the rules can do so at the end of a day, a year, or at any other time an entry is made in a log. Those who would conscientiously try to comply with the October 1984 requirements would suffer the penalty of interrupting potentially productive, income-producing time to satisfy an absolutely needless requirement.

IRS's modified regulation is based on a much more common sense approach. Allow me to draw a contrast.

The regulation issued in October, 1984 required that, "at or near the time of occurrence," a taxpayer intending to claim a business deduction for a vehicle record the: (a) purpose of the trip; (b) destination; (c) contacts made, and (d) beginning and ending mileage.

For a sales representative who makes several sales calls per day, in the same or different cities, and uses the vehicle exclusively or nearly exclusively for business, such a requirement takes time away from productive selling efforts.

The October 1984 contemporaneous log proposal also suggests a sensitive collateral issue. An experienced professional sales representative develops and refines sales techniques designed to appeal to specific customers. Over a course of years, the sales representative may deem it advantageous to engage in considerable missionary work with accounts that may produce little or no immediate return.

The contemporaneous log creates an admissible business record that would allow IRS as well as third parties to question a sales representative's enlightened but private business judgment. Such a document could be terribly misused by a principal looking to manufacture reasons to justify any number of improper actions, including withholding payment of earned commissions.

IRS's modified regulation on this point is much more sensible. As published in the Federal Register on February 20, 1985 (page 7039), the Service used this example: "... use of a passenger automobile by a salesman for a business trip away from home over a period of several days may be accounted for by a single entry."

We would support IRS's modified regulation as being reasonable. The Bureau has encouraged similar recordkeeping for many years. We provide, in fact, weekly travel and entertainment expense logs designed according to IRS's requirements; the form has the "unofficial" approval of the Service.

The large number of bills introduced by members of Congress to repeal the requirement for "contemporaneous" recordkeeping is resounding evidence of public dissatisfaction. These bills were sponsored, of course, in response to pleas from their constituents who are already burdened by paperwork and time-consuming recordkeeping. This is perhaps more illustrative of the problem caused by IRS's overly zealous interpretation of the 1984 law than any examples I can give.

We commend the Ways and Means Committee for seeking public comment on this issue.

Thank you, Mr. Chairman.

BUSINESS ADVISORY COUNCIL ON FEDERAL REPORTS,
Washington, DC, March 7, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR Mr. DOWLEY: The Business Advisory Council on Federal Reports (BACFR) is the only private sector organization solely dedicated to reducing the paperwork burden which government imposes on business. Its membership encompasses all types and sizes of companies and their industry trade associations. Thus, we have a deep concern over the Treasury regulations referenced above.

The legislative and regulatory history of provisions requiring business to maintain "adequate contemporaneous records" are well known and need not be repeated. The same is true of tax treatment of so-called non-statutory fringe benefits.

For reasons set forth in the testimony presented to the Committee at its March 5 hearing by the National Association of Manufacturers (NAM), BACFR urges prompt repeal of the contemporaneous recordkeeping provision in section 179 of P.L. 98-369, the Deficit Reduction Act of 1984. BACFR endorses the entire NAM testimony.

Testimony at the March 5 hearing on costs versus benefits of the recordkeeping provisions gave powerful validity to the already persuasive case for repeal. Costs of compliance were estimated at up to a whopping \$7 billion, while Treasury Department witnesses provided a preliminary assessment of a relatively insignificant \$100-200 million in revenue gains.

Additionally, consideration should be given the testimony of Donald C. Alexander that when he was Commissioner of the Internal Revenue Service, the recordkeeping requirements in prior law served IRS well and were enforceable.

We also found positions taken at the hearing by the following BACFR members highly convincing in favor of repeal of the contemporaneous recordkeeping requirements: American Association of Nurserymen, Inc.; National Association of Wholesaler-Distributors and National Small Business Association, jointly with the Small Business Legislative Council (which represents over 4,000,000 small firms).

We know the Committee will give careful consideration to all views presented to it. We respectfully request that this statement be included in the printed transcript of the March 5 hearings.

Respectfully,

EUGENE J. HARDY, *Chairman.*

DALLAS, TX, February 25, 1985.

Congressman MARTIN FROST,
Longworth Office Building, Washington, DC.

DEAR CONGRESSMAN FROST: Enclosed is a copy of my mileage record for one of my two commercial ½ ton trucks. I see no advantage from a revenue producing standpoint this record will be. It is a pain to remember to fill in and I am a traffic hazard when I try to fill in while driving. I have not listed stops for cokes at 7-11 convenience stores which is probably an oversight on my part.

My car I try to keep business records too—but don't use it 100% so not quite as difficult—but still just added bookwork.

I believe we are trying to squeeze the last penny out of an overworked tax system. This squeezing will cause an alienation of many self employed and small business people, ranchers, farmers.

Please let small businesses grow and pay more taxes rather than drive them into the underground economy which pays no taxes—that competition is stiff enough without even more regulations on the honest business people.

Thanks for you notice-letter.

CLYDE R. BUTLER.

CLYDE R. BUTLER - ARBORIST AND PEST CONTROL
MONTH OF: FEB-85

DATE	DESTINATION / NAME	PURPOSE	CODE	MILES
5	ROYAL LAKE-RATS	4910		66
6	ADD MACHINERY REPAIR WILSONVILLE, INDIANA	4955		
7	METRO - PRE 5:00 PM TECH FIRM	4985		
8	ROYAL LAKE RATS, METRO JEFF METRO PRELIM, OAK TREE, MOON JOBS			
9	TECH FIRM, TIME & HULL	5170		
10	BIBB CHINA ETC.	5185		
11	HUTCHESON, KEY, TECH FIRM	5270		
13	PARK LAKE, LIVE OAK	5300		
14	DO spraying 6 places			
15	DO spraying	5395		
16	BAKER, METRO PRELIM, PRELIM			
17	OAK CLIFF METRO, JOB	5478		
19	ROYAL CREST, MENSAL, WHEELS	5560		
20	SPT-170 / FIRM, VAN	5590		
21	SUPPLIES - MAGNOLIA	5606		
22	LOOK AT JOBS METRO, SAV.	5640		
24	MALCOLM ST WHITE, WUB (FORGOT)			
25	GARLAND-2 JOBS			
TOTAL BUSINESS MILES (A)				
BUSINESS % = $\frac{A}{B}$		ODOMETER ENDING		
PERSONAL % = $\frac{B-A}{B}$		ODOMETER STARTING		
		TOTAL MILES (B)		

YES TO CALCULATE
TIME

P.S.—I see no benefit revenue-wise to this record. I am already overloaded with government forms due when unemployment taxes exceed \$100.00, S.S. & I.T. exceed \$500.00, quarterly reports, annual reports, state reports, trying to make a profit, plan work, supervise work, please customers, get proper supplies, etc., etc.

Why add more to my frustrations.

STATEMENT OF SENATORS DAVID ROBERTI AND WILLIAM CRAVEN, STATE OF CALIFORNIA SENATE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, LEAGUE OF CALIFORNIA CITIES, AND COUNTY SUPERVISORS ASSOCIATION OF CALIFORNIA

My name is David Roberti. I am a California State Senator and serve as Chair of the Senate Rules Committee and President pro Tempore of the Senate. I am joined in providing this testimony by Senator William Craven (R-San Diego), also a member of the Senate Rules Committee. I appreciate this opportunity to place into the record the views of the National Conference of State Legislatures, the League of California Cities, the County Supervisors Association of California and my own Legislature regarding taxation and record keeping on government vehicles.

The record keeping provisions of the 1984 Deficit Reduction Act relating to vehicles owned by State and local governments will place cumbersome new paperwork burdens on not only my state, but also other states and counties, cities and towns across the nation that can ill-afford the loss of time and the resulting costs.

On behalf of the organizations for which we are speaking, we ask the Committee to adopt an amendment to the 1984 Deficit Reduction Act that would exempt public sector vehicles from the provisions of the Act.

These vehicles already are the subject of strict accounting procedures and regulations with regard to their use. Indeed, California law and the State Constitution prohibit the general use of public sector vehicles. Government employees have little to say in defining the uses of vehicles, and violations can be grounds for disciplinary action.

The purchase of cars by the public sector does not result in depreciation deductions on federal tax returns because State and local governments are not-for-profit entities. There are no claims for tax credits. And we know of no state, county or city which includes among their pools of cars Mercedes Benz's or other luxury vehicles that were, as we understand, the original subject of the concern of this Committee and the Congress when the recent tax bill was adopted.

We support the intent of the 1984 Deficit Reduction Act, which among other things, was to limit depreciation allowances on luxury cars and curb abuses where private business provided cars to employees, deducted them as business expenses and then turned a blind eye on the frequent personal use of the car. In short, we are not quarreling with the intent of Congress, but it appears to us that the IRS regulations far exceed the intent of Congress as they most certainly apply to vehicles owned by State, county and city governments.

Notwithstanding the fact that public sector vehicles do not result in losses to the Federal treasury, there are uses from time to time for the personal benefit of employees—and they are required to do so. For example, many local police departments require their officers to not only drive their vehicles home, but also to park the cars in highly-visible places on the streets where they live. Social workers, too, are required to use government-owned vehicles. Unlike the emergency nature of the police cars, the vehicles used by social workers are taken home so that they can go directly to scenes of battered women and children and to other sites where the social worker can be of assistance. Furthermore, in our major cities, welfare and other city departments, where public vehicles would normally be kept at night, are frequently in high crime areas where they could be the targets of vandalism and theft. Secure parking structures would have to be provided at taxpayers expense.

Under the IRS regulations any governmental employee issued a vehicle to carry out their public duties would be required to keep time consuming contemporaneous records of their use of the vehicles. Furthermore, these employees must be taxed on the imputed value of their required personal use of these cars to travel to and from their homes.

Let us provide some further illustrations of the problems posed by these regulations. Many rural school districts require the drivers of school buses to keep these vehicles at their homes when they are not in use. The same is true of the drivers of snow plows in certain very rural areas. The IRS regulations require that the full annual value of the vehicle be used to calculate the imputed value. However, school buses and snow plows are not used year round. Drivers of school buses and snow

plows are required to keep their public sector vehicles at home because keeping them in the areas in which they are used reduces mileage costs to local government. To treat the use of these vehicles as income to the public employees is simply unfair—especially to charge them for value that includes time when the vehicles have no utility.

Implementation of these vehicle-related provisions also cause non-Federal governments a problem with regard to their collective bargaining arrangements. Already, State, county and local governments withhold taxes on certain non-cash "income" depending upon each agreement. Many public employees who are the subjects of labor agreements may soon find that their take-home pay is reduced as a result of their mandatory use of public vehicles. Our lawyers suggest that this could result in public employee union grievances on behalf of their members.

In California, government-owned vehicles are used by government officials, police and fire employees, social workers, street and road department personnel, water and sanitation workers, building inspectors, to name but a few, and, I am sure, others. The State of California alone has 2,842 vehicles assigned to individual employees.

The cost to the State to generate a few hundred thousand dollars in Federal income will be high both in terms of increased paperwork burdens and lost productivity.

We at State and local government levels must now keep records in and on every vehicle, collect them quarterly and after assigning values to each determine the "income" resulting from any personal use. The stack of paperwork resulting from this will be measurable in feet. This is the kind of burdensome red tape that makes private citizens feel their government is unnecessarily increasing its costs.

We do not believe that Congress intended to scoop up the local police officer, social worker, bus driver, snow plow operator and other government employees in its effort to eliminate abuses by business of the tax law and regulations relating to the use of vehicles.

As legislators, we know how difficult it would be to write law or regulations that differentiates the use of an emergency vehicle from one used by a social worker, or to distinguish the school bus from the snow plow or the city building inspector's car from the fire chief's. Perhaps it can be done, but in the long run is that what the Congress really wants?

We are your partners in government—partners who know that Federal budget decisions will result in shifts of program costs to State and local governments. We believe that the limited revenue that will result from enforcement of the public sector vehicle use is far outweighed by the costs. The payer of Federal taxes is the same payer of taxes to State, county and local governments. The Federal government may increase its revenues slightly by the compliance of the States, counties and cities with these auto-use rules, but it will come at a high administrative cost to non-Federal governments. And it is that administrative burden that is of great concern to us. We believe these regulations will be extraordinarily costly to us with a negligible return to the Federal government.

STATEMENT OF HON. H.L. (SONNY) CALLAHAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF ALABAMA

Mr. Chairman, I am glad to have this opportunity to appear before this committee to speak out against the Internal Revenue Service's proposed rules on the record keeping required to claim business use tax benefits for automobile use.

I recognize that this body has had a very difficult time in recent years in seeking ways to reduce the deficit without increasing taxes, and I concur with the philosophy that we must try to collect taxes that are already owed to the Treasury. Implicit in this philosophy, however, is the notion that a large uncollected revenue base is available because a great many individuals are tax cheaters. Clearly, this is true to some extent, but I am afraid the Congress last year labelled a large segment of our society—honest business people, farmers, and others—as dishonest. I think this is an unconscionable way to treat the people who make our economy run.

Mr. Chairman, I was a businessman all my life prior to taking my seat in the House this January. I believe I am well-qualified to attest to the government paperwork that is breaking the backs of businesses throughout this country. I have personally had to wade through the redtape and can assure you that it is a nightmare. But, in looking at the new contemporaneous recordkeeping requirements for business automobiles, I can tell you I am glad I am out of the business world. I know those people who have cheated on their taxes in the past will find a way to continue

to do so. Worse, I would expect people who have not cheated to start in order to avoid these excessive requirements.

The IRS on February 20 published modified temporary regulations to implement the requirements of Section 179 of the Deficit Reduction Act. The modifications are a step in the right direction and will give some relief to a great many who were affected by these provisions, but they simply do not go far enough and the law should be repealed until such time as the entire issue is studied more adequately.

During my visits back to my district, this is the single issue that has generated the most comment. It is more controversial than the budget, the deficit, defense spending or any other subject. I have also received hundreds of letters urging repeal of Section 275(d) of the Deficit Reduction Act.

Mr. Chairman, I do not profess to be an expert on the economics of the record-keeping requirement, but it has been estimated by some that it could cost consumers some \$7 billion while enhancing revenues by only \$100 million. If these figures even approach accuracy, they show that our constituents have every reason to be outraged. I simply cannot see the logic in this exercise. I strongly urge the Committee to repeal the recordkeeping requirements.

I appreciate having this opportunity to express my views to this Committee.

C-B AIR CONDITIONING Co.,
Dallas, TX, March 1, 1985.

Representative MARTIN FROST,
Longworth House Office Building, Washington, DC.

DEAR REPRESENTATIVE FROST: Appreciate very sincerely you keeping me informed of what is going on concerning the Tax Reform Act of 1984.

Also, I appreciate the efforts of people like yourself of at least getting some relief. As you stated in your letter, there is still a great deal that needs to be done to make this a livable bill. I have conversed with contractors who do service work throughout the country, and very few have adequate space for parking their vehicles at their place of business. Plus the fact, that in most service businesses such as ours, twenty-four hour emergency service is essential to our staying in business.

So, we feel, if for no other reasons, to tax an employee for driving a vehicle and call it commuting, instead of giving it its true name which is a business expense, and one which we must endure to stay in business. Hopefully, all of these things will be taken in to consideration with good judgment before the tax bill that has some merit is lost completely, or the confidence that the business world has in our government is badly damaged.

Again, my thanks for any new developments that you may be able to pass along.

Sincerely,

WILLIAM E. BRISTER.

STATEMENT OF DAVID S. KING, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

Having reviewed the text of the proposed IRS regulation dealing with requirements for contemporary automobile record-keeping for tax purposes (see Federal Register Vol. 50, No. 34, page 7038) it is concluded that the said regulation is unreasonably burdensome, redundant, and expensive, and that its objectives can be achieved through simpler and more effective tax procedures. To insist on finalizing the above proposed procedures would not only result in an almost incalculable amount of paperwork and administrative delay and expense on the part of the taxpayers, but would cause the latter to lose much respect for the IRS regulations, which respect must, in the final analysis, constitute the foundation for all effective tax law enforcement.

The following constitute a few recommendations which the IRS, or Congress, might consider, which would accomplish some of the desired results, but within more rational and acceptable procedural limits.

A. Business executives, top aides, and professionals almost always use their company-provided vehicles for some varying amounts of business use. In order to recognize this and to be fair to both the taxpayer and to the IRS, it is suggested that in return for reporting 80% of the value of the vehicle for personal use, they be permitted a 20% business exclusion without having to keep a mileage log. This rule already has a precedent in a recent amendment to the temporary and proposed regulations relating to farmers and certain other employees who are presumed to have a designated percentage of business use if they are willing to pick up a designated

percentage of personal use. If such a person finds 20% to be too low an amount for business use, he may be given the option of keeping a detailed log.

This exclusionary rule could be of help to the directors and administrators of fleet-operating organizations who may use their organization-provided vehicles more for personal use than business use.

B. Out of necessity, business executives are often provided vehicles to assist them in discharging their executive responsibilities. However, considered individually, many of them may only drive a minimum number of miles per year. This results in a very high cost being attributed to them for low personal mileage. For example, assume that a vehicle whose yearly rental value is placed at \$3,600 is driven only 5,000 miles in a year. Of this number of miles, 80% is business. That means that the cost of personal use for 1,000 miles in a given case is 72¢ per mile. In order to reduce this harsh result, it is proposed that two alternatives be considered.

1. Provide for an executive exemption (where appropriate), or a ministerial exemption (in the case of churches, where appropriate) from record keeping requirements and personal use inclusion for a nominal amount of mileage of around 10,000 miles annually.

2. Charge each user a per mile rate for all personal use mileage (such as 15¢) rather than attributing a portion of the total value of a vehicle to him.

C. At times it is most prudent (as a convenience to the employer) that an employee take a vehicle home for security, to continue on a work assignment at an early hour the next morning, deliver a person or materials for the employer on the way home or on the way to work, etc. While there may be some incidental personal commute value accruing to the user, as a practical matter it is believed de minimis use should be exempted, or at least a commuting exemption amount determined. Other personal use could be prohibited.

D. It is strongly believed that under appropriate circumstances, a per mile of use value should be used instead of a single, invariable lease value which has nothing to do with actual costs. This is particularly true in the brief, temporary or occasional use of vehicles from a car pool or fleet where there are multiple users, or where the possible personal use of such vehicles is severely limited and de minimis in any event.

E. It is also suggested that where an employer and an employee may agree that in return for the employer's not having to be any part of the record-keeping procedures for the personal and business use of the auto, the employee is willing to have 100% of the value of the vehicle attributed to him as personal, the employee should be able to then deduct on his own tax any business mileage he may prove by the required record keeping rules.

WASHINGTON, DC, March 8, 1985.

Mr. JOSEPH DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. DOWLEY: This letter has been prepared on behalf of the Coalition of Automotive Associations (CAA) and represents that Association's testimony concerning recent hearings held before the Committee on Ways and Means of the House of Representatives. The subject matter of those hearings was the documentation requirements for deducting the business use of an automobile. We would request that this testimony be made a part of the record of those proceedings.

The Coalition of Automotive Associations is composed of nearly two thousand (2,000) small businesses. The membership of CAA contains manufacturers, representatives, and distributors of specialty motor vehicle equipment, as well as importers, manufacturers, and distributors of parts and accessories for imported vehicles. Like all American small businessmen, our membership will be unnecessarily damaged by the requirement of "adequate contemporaneous records" for automobile business deductions. The Association supports the immediate passage of H.R. 600, H.R. 531 or any other measure which will repeal the contemporaneous recordkeeping requirements for all property, including automobile business use.

There is little doubt that the Internal Revenue Service must be vigilant in these days when an ever expanding deficit threatens our economy. These recordkeeping requirements, however, are counterproductive. They effect a wholesale change in the way America has done business since the income tax was first enacted. These requirements will cost the business community in both time and efficiency in the attempt to comply. Small businesses will be even harder hit, since traditionally they lack the resources to obtain all the information necessary for instantaneous compliance. As a result many otherwise valid deductions will be lost.

There was an outcry from businessmen when the regulations on recordkeeping were first published. Although the regulations have since been amended, they are still too complex and onerous for American business. This complexity stems from various factors. The first factor is that they affect such an expansive group of taxpayers. This makes it impossible to fashion precise rules that will be satisfactory to all groups since countless situations could arise. A second factor adding to the complex nature of the regulations is that they impact more than one Internal Revenue Code Section. In fact, the regulations have been promulgated under Code §§ 61,132,274(d) and 280F. The regulations fail to clearly and adequately take into account the interaction between these Sections. Finally, the regulations have set extremely high standards of precision in such a diverse area that even tax attorneys, let alone small businessmen, have difficulty in understanding the legal obligations involved. The Internal Revenue Service, however, cannot be blamed for the burdensome results of their recent attempts. The statute itself imposes the offending complexity. Therefore, it is the statute which must be changed. We urge Congress to repeal the "adequate contemporaneous records" requirements with all deliberate speed.

Sincerely,

JOHN RUSSELL DEANE III,
*Counsel, Coalition of
Automotive Associations.*

STATEMENT OF HON. E. THOMAS COLEMAN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MISSOURI

Mr. Chairman, I appreciate this opportunity to express my strong opposition to the new Internal Revenue Service record keeping requirements. I have heard from hundreds of constituents who feel that these ridiculous requirements simply represent another example of government overkill, and quite frankly, I agree with them.

I have received telephone calls and letters from irate farmers, contractors, realtors, salespeople, from practically everyone who utilizes a vehicle in the operation of his or her business each day. To maintain "contemporaneous records"—to keep track of every single mile driven, day in and day out, to log in dates, names, purposes, to "comply" with the new provisions—is simply a waste of their time. Small businesses and farmers are already overburdened with federal paperwork, and these new regulations simply represent more needless record keeping.

Mr. Chairman, we should overturn the legislation on which the IRS has based the new regulations, and I am cosponsoring several measures to repeal these onerous provisions. I appreciate the opportunity to present my comments today, and I hope this hearing will ensure that the new requirements are rescinded as soon as possible.

COHN-DANIEL CORP.,
Dallas, TX, February 28, 1985.

Hon. MARTIN FROST,
*Congressman, 24th District,
Republic Bank Tower, Dallas, TX.*

DEAR MR. FROST: The following are problems and suggested methods of adjudication:

1. Some service vehicles do not generally come to the office, but go from home to the closest service call. The savings in time and fuel justify our providing the transportation to and from their home.

2. Delivery trucks which generally (95%) are kept at the place of business are sometimes sent to pick up material late in the afternoon so as a necessity are used to go home and make an early delivery to the job site. Such situations should be ignored.

3. Executives, salesmen, field superintendents, etc., who do not go to their offices as the first order of business, but may do so at times, always go home as the last order of business. It would be fair to make a percentage of miles charge for transportation and possible personal use. I hope the charge would be on a percentage of total miles and at a price per mile.

I trust this letter will be of some help. I agree, that at this time there should be no escape from fair taxation, but it must not fall only on the least able, nor require such great time as to make cheaters out of normally honest citizens.

Thank you for your letter and please continue to help those of us who want to do what is fair and just, but sometimes find ourselves in serious difficulty because of government failure to understand reality.

Very truly yours,

HENRY COHN,
Chairman of the Board.

STATEMENT OF THE COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

This statement on the regulations implementing the 1984 legislation adopting strict recordkeeping requirements for automobiles, personal computers, and other "listed property" are submitted on behalf of the Computer and Business Equipment Manufacturers Association (CBEMA). CBEMA is a nationwide association composed of approximately 40 manufacturers of computer systems, sophisticated business equipment, and other high technology electronics products. CBEMA members make extensive use of passenger automobiles and other vehicles in connection with sales and service activities. In addition, the application of the 1984 legislation to computers and peripheral equipment is of particular concern to CBEMA members because of the anticipated impact of the new requirements on their customers and employees, as well as on the member companies themselves.

The revised Treasury regulations do not solve the fundamental flaws in the 1984 Act. They would not significantly reduce the paperwork burden and other compliance costs associated with the new automobile log requirements. Moreover, the various safe harbors would not apply at all to other "listed property," including computers. In our industry employer-supplied vehicles and computers are used by employees predominantly, if not exclusively, for business purposes. Accordingly, we strongly urge that the contemporaneous recordkeeping requirements be repealed, not only for automobiles and other vehicles, but also for computer equipment and other "listed property."¹

Employers in the computer and business equipment industry commonly provide cars and trucks and salesmen and service personnel. To provide quicker service to customers and to avoid the special expenses of garaging on the business premises, many of these vehicles are taken home by employees each day. Even if only two log entries per day per vehicle were required, the administrative costs of compliance—including employee time, the cost of outside accountants, and expenses related to verification, compilation, and storage of the data—are excessive. These costs constitute deductible business expenses of the employer, which the experience of CBEMA members indicates will far exceed any extra compensation income that may be attributed to employees as a result.

The safe harbors included in revised Treasury regulations will not alleviate the burden and expense associated with the contemporaneous log requirements for many CBEMA members. The "business premises" exception, dispensing with log requirements for vehicles left on the employer's premises overnight, is unavailable to the many companies that lack the space or security to accommodate overnight parking. The cost of using commercial parking facilities or hiring security guards could be prohibitive for many companies. Second, the special rule for valuing commuting use only applies if the employer forbids other personal use and requires the employee to commute in the vehicle for "noncompensatory business reasons." This rule is unnecessarily restrictive and appears designed only for specially-equipped vehicles such as police cars. Finally, the safe harbor intended for sales and service personnel will not help employees whose personal use of the company vehicle is less than 30 percent of total use (20 percent in the case of non-passenger automobiles). These employees will still have to keep logs to prove a higher percentage of business use.

Company cars are ordinary business necessities for rank-and-file sales and service employees, not luxury automobiles for highly-paid executives. Many CBEMA members already have a reimbursement or income inclusion policy with respect to personal use, including commuting use, of the vehicles by employees. Therefore, in our industry we believe that personal use of company vehicles is insignificant and that most of this personal use is already being charged to the employee. We believe the incidence of noncompliance with prior law is minimal and certainly not significant

¹ The following bills would repeal the contemporaneous log requirements for all listed property: H.R. 531, 534, 536, 541, 545, 589, 594, 600, 614, 647, 662, 706, 707, 728, 750, 779, 783, 812, 813, 826, 863, 884, 954, 981, 1117, 1269, 1305, and 1325; and S. 245. Other recently introduced bills would amend the new substantiation requirements only with respect to automobiles and other vehicles.

enough to justify imposing extensive new paperwork requirements across-the-board. Moreover, there is no evidence that requiring daily logs will improve compliance by taxpayers. Thus, the 1984 Act requirements establish a system that inevitably causes considerable inconvenience to employees without improving significantly revenue collection by the government.

The contemporaneous substantiation requirements are even more unworkable and offer even less potential for increased revenue in the case of computers and peripheral equipment than in the case of company cars. Many employers now supply appropriate employees (generally technical personnel) with personal computers to use in their homes on company matters. Particularly with the advent of electronic mail and filing, these computers permit engineers and other personnel to perform at home the same activities they perform in their offices. Other employers supply employees with small portable computers or terminals for taking notes, transmitting messages, and drafting documents in business meetings outside the office or at home. The paperwork burden created under the statute by a requirement to log each and every use of a personal computer or terminal used outside a business office will be exceedingly burdensome—to become agents as well as to taxpayers. In the case of computer equipment the logs will, as a practical matter, be impossible to verify; the limited utility of expanded substantiation requirements to the government will be far outweighed by the resulting inconvenience to both taxpayers and auditors.

CBEMA member companies which provide such equipment to employees do not do so with the intent to supply a compensatory fringe benefit, and they believe that employees' use of such equipment is predominately, if not exclusively, business-related. Unless administrative accommodations in the form of liberal exceptions and/or safe harbors are adopted, the substantiation requirements are likely to create a significant impediment to expansion in the business use of computers and peripheral equipment, with resulting adverse effects on efficiency and productivity. While much public comment has focused on the effect of the statute with respect to automobiles, we urge that the case for repeal of the substantiation requirements is even more compelling with respect to computers and peripheral equipment.

Without the contemporaneous log requirements, taxpayers still have to substantiate business deductions with adequate records. The I.R.S. can already disallow unsubstantiated deductions without requiring all employers to bear the excessive costs and inconvenience of daily logs. The new rules will have the effect of denying legitimate business deductions to honest employers who find it impossible or too expensive as a practical matter to comply with these overly complex regulations.

Many deductible business expenses confer some personal benefit on employees, yet not attempt is made to tax the personal value of business meals or travel or office telephones, desks, and office supplies, which can all be used for personal purposes. Minor personal benefit from such business property is properly ignored in computing taxable income. It is discriminatory and inconsistent with sound tax policy to single out personal use of business vehicles and computers for special tax burdens.

In summary, in the computer and business equipment industry extensive use is made of trucks and automobiles in connection with sales and service, and of computers and peripheral equipment in connection with the ordinary conduct of business. Our companies anticipate very high administrative costs associated with compliance with the new rules which, compared with the small amount of extra income expected to be attributed to employees, will result in a net revenue loss to the Treasury. Our members are unhappy and confused over the lengthy and complicated regulations implementing the log requirements. We believe strongly that personal use of company vehicles and computers does not represent a significant untaxed fringe benefit to employees in the computer industry. Accordingly, we urge this Committee to support the prompt repeal of the contemporaneous record requirement for listed property, including computers and related equipment as well as automobiles and other business vehicles.

DANA CORP.,
Toledo, OH, March 8, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, DC.

DEAR MR. DOWLEY: Dana Corporation herein offers its comments regarding Internal Revenue Service temporary and proposed regulations relating to the recordkeep-

ing requirements for automobiles, income reporting personal use and tax withholding thereon.

Dana and its domestic subsidiaries have approximately two thousand (2,000) company automobiles assigned to its employees for various job related needs. The burden of recordkeeping imposed on these individuals as well as upon Dana is unreasonable and we believe unnecessary to achieve the intent of taxing such benefits. A system of either reimbursement by the employee to the corporation for value of personal use or the reporting of wages on Form W-2, both established on a basis subject to review on IRS audit, have proven satisfactory in the past.

The requirements inherently more onerous are those concerning quarterly wage reporting and payroll tax withholding on such noncash payments. As a decentralized corporation, Dana has many payroll systems ranging from computerized to simple manual types and the 2,000 employees involved fall within them all.

The following summarizes some of the problems in quarterly compliance:

Assuming the special rules are used for valuation of the automobiles, the log records have to be collected from the employees and the percent of personal use on a year to date basis determined for each. This percent is then applied to the annual lease value assigned to the specific auto. The value must be computed on the year to date basis reduced by prior quarter amounts to get to the current quarter's value. This is necessary so that at year end the proper amount is reported for the year. A dramatic reduction in personal use could conceivably result in a "negative" income and withholding for a particular quarter. Of course, if there was a change of automobile for an employee during the period, you have separate lease values to deal with.

Having determined the value reportable as wages, calculating the withholding for FICA and federal, state and local income taxes is the next challenge. While payments are considered supplemental wages, a flat 20% rate for federal and differing rates for all other income taxes is applied. However, determining if FICA is to be withheld depends on whether the wage base has already been reached on the employee's regular cash wages. With integration of cash and non-cash payrolls impossible to accomplish within our varied systems, FICA treatment will require a separate and time consuming review for each employee each quarter.

Assuming the above can be accomplished for timely quarterly reporting of income and taxes, withholding from the individual obviously cannot coincide with the quarter. As a matter of fact, it is apparent to us that collection of tax from the individual will have to be outside the payroll system. With 2,000 employees involved, this will be an administrative nightmare.

We believe reporting and withholding problems explained above could be substantially reduced by shifting from a quarterly to an annual basis. The slight revenue loss from quarterly withholding in no way justifies the additional administrative cost and burden imposed on employers under the present regulations.

We appreciate the opportunity of offering our comments for consideration of the Committee on Ways and Means.

Sincerely,

T.P. SHEA,
Assistant Treasurer,
Director of Taxes.

STATEMENT OF HON. GEORGE (BUDDY) DARDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, members of the committee, thank you for the opportunity to testify on behalf of the taxpayers in Georgia's Seventh Congressional District. The approval of the Tax Reform Act of 1984 by the 98th Congress in June of last year provided for numerous and far-reaching changes in our tax system. While I am generally in favor of measures of eliminate the deficit and reform our present tax system, I felt many of the provisions in the Tax Reform Act were unsound and, therefore, voted against this legislation. Section 179 of the Tax Reform Act is one provision in particular which I believe creates unnecessary hardships for the taxpayer.

As you are aware, this section of the Tax Reform Act provides for changes in the Internal Revenue Service rules and regulations on the taxation of automobiles used for business purposes. The changes in the Tax Code as established in the Tax Reform Act, require taxpayers to substantiate any tax credit or deduction for business use of listed property with adequate contemporaneous records. In order to comply with this requirement, taxpayers must maintain cumbersome logs or jour-

nals with individual entries specifying names, purposes, mileage and times for property used for personal and business purposes.

On February 20, 1985, the Internal Revenue Service issued temporary and proposed regulations modifying the requirement to keep adequate contemporaneous records for automobiles and certain other vehicles. The Internal Revenue Service contends that these modifications will reduce substantially the recordkeeping burden imposed for certain vehicles used for business purposes. These modifications will apply to farm vehicles, vehicles with no personal use, certain business vehicles used only for commuting, and certain vehicles used in sales and service. I still believe, however, that the provisions in the Tax Reform Act which established the recordkeeping requirements should be repealed.

The simplicity of our tax system is an important aspect to consider when making changes in the Tax Code. The simplicity can be measured by how well taxpayers understand the tax system and how easily they can comply with its provisions. A finance minister to Louis XIV once wrote, "The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of hissing." Mr. Chairman, during the past few weeks, I have received hundreds of letters from farmers, electricians, plumbers, salesmen, painters, doctors, and a list of others attempting to comply with these recordkeeping requirements. Regardless of the particular field of work, the complaints I am hearing from my constituents are all the same. These taxpayers are frustrated from daily attempting to maintain meticulous records for each business related trip they make in their automobile. The upkeep of these records requires a great deal of time as well as large amounts of paperwork.

I do not believe taxpayers should be subjected to the overall hassles of adhering to these recordkeeping requirements. Accordingly, I have introduced the Business Tax Records Reduction Act of 1985, H.R. 783, to repeal section 179 of the Tax Reform Act. I am concerned that our Tax Code be sound enough to force strong compliance with regulations for deductions relating to automobiles used for business purposes. I do not, however, believe we should continue to unduly burden the American taxpayer with this bothersome recordkeeping requirement.

Mr. Chairman, the impetus for tax reform in the 99th Congress is more so than any Congress since the Vietnam war. I am aware of the determination of this committee to create a balance between equity, efficiency and simplicity in our tax system. I am, therefore, requesting that this committee expedite legislation to allow Congress to repeal these burdensome requirements and relieve the American taxpayer of such unnecessary hassles.

Thank you, Mr. Chairman, for bringing this important matter before your committee.

DAVIS & HARMAN,
Washington, DC, March 8, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We wish to advise you of our concerns over certain aspects of the October 24, 1984, temporary and proposed regulations interpreting the provisions of Section 280F of the Internal Revenue Code of 1954 as amended. Section 280F, as added by the Deficit Reduction Act of 1984, limits the amount of cost recovery deductions and investment tax credit for taxpayers who use certain "listed property" for business and personal purposes. In this regard, we are concerned over the failure of the proposed regulations to adequately address the issue of what constitutes "a regular business establishment" under Section 280F(d)(4)(B) as that term may be applied in connection with transportable computers utilized by outside salespersons.

Section 280F(d)(4)(A) defines the term "listed property" so as to include, *inter alia*, passenger automobiles, computers, and peripheral equipment. However, Section 280F(d)(4)(B) provides an exception from that definition (and thus from the general rules of Section 280F) for "any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment" (emphasis added). Neither Congress in the legislative history accompanying Section 280F(d)(4) in the 1984 Act nor the Internal Revenue Service in the proposed regulations defined the term "regular business establishment."

We submit that any legislation amending Section 280F should ensure that the term "regular business establishment" is defined so as to make it clear that the taxpayer using a computer solely for business purposes at customers' homes will qual-

ify for the exception contained in Section 280F(d)(4)(B). Failure to clearly define this term in the manner suggested could result in a distinction being made between the person who utilizes the computer as a "tool of the trade" in door-to-door sales and the person who uses the same computer in a traditional office business setting. Instead, the term "regular business establishment" under Section 280F(d)(4)(B) should be interpreted to treat equally the computer used at customer locations by the outside salesperson and that computer used in a traditional office setting.

The widespread acceptance of the personal computer over the past several years by the business community, coupled with improvements in computers' communication capabilities, has resulted in the increased use of portable computers to transact business at customer locations. Specifically, it has become a common practice over the past several years for outside salespersons to use computers' graphic capabilities to demonstrate the attractiveness of certain financial products. This has become a particularly necessary and effective device for providing illustrations and explanations in light of the variety and sophistication of financial products in the market today. Thus, the computer has become a "tool of the trade" for outside salespersons.

In general, the only distinction between the computers used by the outside salesperson and those used by an inside salesperson in a traditional business setting (assuming both are dedicated solely to business use) is that the former, by necessity, are generally portable in nature. There is no sound basis for such a distinction being used, however, to prevent computers used by the outside salesperson from qualifying for the exception contained in Section 280F(d)(4)(B). Defining that exception narrowly would, at a minimum, discourage the use of a computer by the taxpayer who happens to conduct business at a location other than at a traditional business office. This, in turn, could result in the outside salesperson being at a competitive disadvantage vis-a-vis the in-office salesperson.

Consider, for example, the situation where an insurance company markets its products through retail outlets and by way of an outside salesforce. In that situation, if the term "regular business establishment" is interpreted narrowly, the inside salesperson's use of a computer at a retail outlet qualifies for the exception under Section 280F(d)(4)(B), whereas the outside salesperson who uses the same computer to sell the same products at customers' homes will not qualify under this exception. Such a result could not have been intended.

As a matter of policy, a "regular business establishment" should be interpreted to eliminate any distinction in tax treatment between the outside salesman who uses a computer in customer locations and the person who uses the computer at a traditional business office. This would alleviate the complexity and other problems inherent in any definition that sought to limit a "regular business establishment" to one geographic location.

For the foregoing reasons, we respectfully request that any legislation amending Section 280F clarify the term "regular business establishment" so as to include any customer location at which the outside salesperson conducts his or her business activities.

Sincerely,

WILLIAM B. HARMAN, Jr.
GAIL B. WILKINS.

DEMINEX U.S. OIL Co.,
Dallas, TX, March 5, 1985.

Representative MARTIN FROST,
24th District of Texas,
Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN FROST: Thank you very much for giving me the opportunity to write this letter, which I would like for you to forward to the Committee. It is written in the form of a fable.

A stablemaster lived on the edge of Philadelphia back in colonial days. He had 8 fine horses and one jackass, which he kept as a pet. One exceptionally bad winter he found that his feed supply was not going to be adequate to feed all of the animals, so he made a harsh decision. He would let the jackass run free and fend for himself, and start gradually replacing a portion of the feed with dirt. First he would start with just dust from his wife's dust rag. Then he would add the dirt which she swept up from the floor. Then he would add some composte and finally he would just add dirt which he would dig up from the field. The idea didn't seem too bad at first, but as the feed diminished the dirt increased, until just before spring, the horses were eating 10% feed and 90% dirt. They didn't appear to be too much the worse for wear, but they had lost a lot of weight. Sure enough, the first bright day

of spring a customer came by to rent 4 of the horses to pull his carriage into the heart of Philadelphia to attend a lavish party. The horses made it in to town, but on the way back to the stable, they all fell over dead. When the customer walked on to the stable, he asked the stablemaster what had happened. The stablemaster told him about the feed. Then the customer asked him whatever happened to the jack-ass. The stablemaster said, "He's over there in the barn, happy and fat. Even a jack-ass knows the difference between feed and dirt."

The new IRS regulations governing records-keeping for the business use of automobiles represents further reduction in personal initiative and free enterprise, the feed-stock of our Republic, and the addition of more regulation and governmental interference, or dirt.

Hopefully, the members of the House Ways and Means Committee will be able to distinguish the difference between free enterprise for the business, as well as the farm community, and unneeded governmental regulation.

Most sincerely,

O.W. FAUNTLEROY,
Vice President of Exploration.

DRESSER INDUSTRIES, INC.,
Dallas, TX, March 7, 1985.

Hon. STEVE BARTLETT,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE BARTLETT: We at Dresser Industries, Inc. would like to express our concern and opposition to the vague and confusing, recently issued "temporary" IRS Fringe Benefit Regulations related to transportation on employer-provided aircraft. We urge you to take whatever steps you can through your office to substantially modify these regulations.

These rules are not only unclear, but they also provide various penalties which could be of great disservice to taxpayers who otherwise try to comply with the tax laws. The interpretation of the regulations—due to their vague and unclear provisions—could result in unfair penalties being assessed by the Internal Revenue Service.

The regulations essentially deal with two issues:

1. The "empty seat" regulation, and
2. The regulation related to non-business use of company aircraft.

The "empty seat" rule is not only discriminatory, but lacks any basis of justification and is probably antiproduative on a cost/benefit basis as the administrative costs of compliance undoubtedly exceed the resulting tax benefits derived by the government from this regulation.

It discriminates as under the special rule, such travel is charged to the employee at full coach airfare. However, parents of airline employees travelling in otherwise empty seats, are taxed on the value at only 50% of coach fare. Airline employees and the immediate family of employees fly free of any fringe benefit tax. There is no logic for taxing an employee of a manufacturing concern on a different basis than an airline employee or the parent of such employee.

The other problem is the application of charter costs to determine the value of purely personal use of a company aircraft. Also, the difference between "nonprimary business" use and "personal" use is not clear. The regulations need to be simplified, clarified and the tax benefit reduced to reasonable rates—first class airfare.

We would appreciate any assistance that your office could bring on this matter.

I enjoyed meeting you and listening to your comments at the Financial Executives Institute meeting in Dallas earlier this year. I hope that you will give us whatever assistance you can regarding this matter.

Sincerely,

ROBERT W. SHOPOFF,
Staff Vice President.

STATEMENT OF THE EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (EEI) appreciates the opportunity to present this statement regarding the Amended Proposed and Temporary Treasury Regulations (T.D. 8009) relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

EEI is the association of electric companies. Its members serve 96 percent of all customers served by the investor-owned segment of the industry. They generate approximately 75 percent of all electricity in the country and service 73 percent of all ultimate customers in the nation.

Electric utilities employ large fleets of vehicles in providing service to customers, and we therefore have a keen interest in the Proposed and Temporary Regulations. As originally issued, the regulations would have required burdensome recordkeeping for hundreds of thousands of utility vehicles that are used exclusively for business purposes. The amended regulations eliminate the requirement to keep these needless records and, to this extent, we believe they are more in keeping with the intent of Congress and are fairer to utilities and the many other taxpayers who use vehicles predominately for business purposes.

Our principal concern with the amended regulations is that they require the imputation of income to employees of utilities who have "on-call" emergency assignments and, as part of their duties, are required to take company vehicles to their homes each day. Most utility companies require certain employees to be "on-call" twenty-four hours a day, seven days a week to respond to emergency situations such as power outages. These employees may be required as a condition of employment to take company vehicles home in order to provide the fastest possible response to emergencies occurring during other than normal working hours.

We believe the regulations should expressly provide that employees of companies which provide essential public services, such as the furnishing of electricity, who are required to take company vehicles home for the purpose of responding to emergencies, are not engaged in commuting and no income should be imputed to them for so doing. We urge that the regulations be further amended to this end. If the necessary amendment is not made, we urge the support of legislation that will accomplish this result.

We are also concerned with several somewhat technical aspects of the amended regulations. The first of these is the requirement of Section 31.3501(a)-1T Q/A-8 that all imputed income be treated as paid on or before the last day of the calendar quarter in which the benefit is provided. Without the use of estimates or the ability to account for activity occurring in one quarter in the subsequent quarter, it will be administratively impossible for taxpayers who own large numbers of vehicles that are partially used by employees for personal purposes to fully comply with this requirement. We strongly recommend that the regulations be amended to permit employee benefits received in one quarter to be imputed as income in the following quarter. This would provide a minimum period of time for most taxpayers to accurately account for the benefits. Any effect of an accounting lag on employees or the Treasury would be negligible because, other than the first year, each year would cover twelve months of activity.

The amended regulations (Section 1.61-2T Q/A 20) contain a special rule that taxpayers may use to value employer-provided road vehicles which are not available for personal use other than commuting. One of the conditions for use of the special rule is that the employee not be an officer of the employer. No definition of the term "officer" is provided in the regulations, and it is unclear whether the rule could be used with respect to junior officers, such as assistant treasurers, assistant vice presidents, assistant secretaries, etc. We believe the regulations should be amended to provide that the term "officer" be defined so as to exclude assistant officers from its meaning.

Finally, as presently proposed, the regulations do not adequately and fairly address situations in which motor pools of standardized vehicles are maintained, any one of which can be used at random for business or non-business purposes by an employee within specified classifications. For these situations, the regulations should be amended to provide income imputation based upon the average of the fair market values of the vehicles in the pool and on the average of the non-business uses of the vehicles in the pool.

Thank you for the opportunity to present our views on these important regulations.

STATEMENT OF HON. MICKEY EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF OKLAHOMA

Mr. Chairman, I appreciate the opportunity to submit this statement in behalf of H.R. 1305 which I introduced on February 27. My bill would repeal section 179(b) of the 1984 Act and negate all the compliance provisions of section 179 of that Act.

At least 250 Members of Congress have joined in sponsoring legislation to eliminate the new IRS vehicle rules. On October 24, 1984, the IRS issued contemporaneous record-keeping regulations, and, on January 2, 1985, it issued rules relating to fringe benefits, including personal use of employer vehicles. These rules imposed an undue burden on all taxpayers who wish to write off the value of their vehicles. Apparently, the IRS has seen at least some of the error of its ways and issued new, temporary rules printed in their Federal Register on February 20, 1985.

I have introduced legislation which would end the confusion existing among taxpayers trying to comply with bewildering regulations. With respect to the new, IRS proposals, Deborah L. Aiken, tax attorney for the Tax Policy Center of the U.S. Chamber of Commerce, has done an excellent analysis in which she made 24 points:

(1) The value of the use of the company property to the employee should exceed \$1,000 before the quarterly withholding is triggered. On an amount smaller than \$1,000 the administrative burden exceeds the value of collecting the tax in advance on this small sum.

(2) It is very difficult for purchasers of fleet vehicles to know what is the fair market value (FMV) of a vehicle. By definition FMV is the established price of a willing buyer and a willing seller. This does not work in the case of large volume purchasers. All vehicles must be valued as of January 1, 1985. The administrative burden of establishing the FMV of huge fleets of automobiles should be alleviated by some kind of safe harbor. We suggest that the FMV of fleet cars should be the capital cost less depreciation at a rate of 2% per month of ownership. Another safe harbor possibility would be to use a blue book value for this one time valuation. In the absence of a safe harbor, there should be some indication that penalties will not result if a good faith consistent method is used to value these vehicles.

(3) There is also a problem in valuing vehicles purchased after January 1, 1985 by large fleet owners. The difficulty is described above with regards to knowing what is the FMV when a volume discount is received by the purchaser. There should be some formula, or add-on amount, to establish FMV as well as clear definitions as to whom this special provision would apply.

(4) The use of statistical sampling to obtain percentages of business use and personal use of vehicles is a very constructive idea. The sample sizes suggested in the proposed regulations are larger than necessary. A sample size of one half of a class under 500 vehicles is excessive because it does little to increase the reliability over that of substantially smaller sample sizes. The integrity of the sampling would be protected by using random samples.

(5) The value of commuting is reduced from \$4 to \$3 per day and this is positive. However, this reduction in conjunction with the lowering of the percentage of ownership requirement to be eligible to use this commuting value seems to be working at cross purposes. In the January Employee Benefit Proposed Regulations a 5% owner of a corporation was ineligible to use the \$4 commuting value. That provision discriminated against small businesses because it is much easier to own 5% of a small business than 5% of a large business. Now the provision is injurious to every one small and large. This is not the direction that the new proposed regulations should move if confidence is to be engendered in the Service's desire to work out a satisfactory conclusion to this outrageous situation.

(6) With regards to the value of computing, a taxpayer takes home a school bus or other large vehicle and does not qualify for the \$3 per day commuting value. The imputed value of the commuting using lease values could exceed the taxpayers income from driving the school bus, for example.

(7) The proposed regulations require that there be a bona fide noncompensatory business reason for the employee to commute in the vehicle. One of the reasons listed is the need to provide security for the vehicle. Is it sufficient to declare that in the employer's opinion that the vehicle is safer at the employees residence? If this declaration is not sufficient what type of documentation or proof is required to substantiate the treatment of the commuting? The importance of this is clear when one considers that by the time the employer is audited and the treatment of the commuting value is rejected many of the employees may be employed elsewhere.

(8) The administration of the 70% business use exception is not clear. An employer could use the 70% business exception and impute the remaining 30% personal use to the employee. Later the employee could produce records showing more than 70% business use and the employer does not have any rules in the proposal regulations explaining how this situation should be handled. The Chamber recommends that in this situation that the employee should take the remaining business use as a compensating deduction on his personal return. This way the employer would be free to choose the ease of the 70 or 80% business exception while the employee could pay tax only on his actual personal usage.

(9) The 70% business use exception is not a high enough percentage for a salesman. Indications from our members put the actual business use at 90%. A salesman is now faced with the choice of paying tax on personal use that is actually legitimate business use of keeping tedious contemporaneous records. We feel that the exception for sales and service should be substantially higher than the present 70 or 80%.

(10) The 80% business use exception for farmers is not a reasonable approach when combined with the 70% income from farming requirement. For example, if a farmer believes at the beginning of the year he qualifies for this exception he will keep no contemporaneous records. Later in the year he may have economic difficulties and be forced to accept a position as an employee in another industry. At this point it is too late to reconstruct the records for use of the vehicles but he will not have received 70% of his income from farming. He will have the double calamity of economic difficulties from his farming which are aggravated by the loss of legitimate business deductions from vehicles. Also many farmers have sponsors who work and bring in more than 30% of the total income on the joint return. We recommend that the income from farming requirement be lowered to accommodate the various situations which occur in the farming community.

(11) It is not clear in the proposed regulation if an employer who is using the 70/30 split for mileage purposes may also reimburse an employee for gas using the same ratio. If this is not intended it should be clearly explained. We recommend that employee be reimbursed for gas and oil using the same percentages as used for mileage. Otherwise an employee who does not have to keep records for the mileage will still be required to keep him for other expenses.

(12) Again we recommend that vehicles which are taken home because the employee is on 24 hour call should not be subject to the commuting value. It seems unfair to require a policeman to take a vehicle home to help crime in his neighborhood and still charge him for the value of the automobile commuting. Also thousands of employees wait at home every night to repair someone's furnace or bail out someone's basement. If an employee is rendering a service by being on 24 call why should he be charged for doing so? It is important to remember that it is often the lower paid employees who are on call.

(13) We need to have a further explanation of what is considered "at or near" the time for purposes of the recordkeeping.

(14) It clearly states in the proposed regulations that a cents per mile rate can not be used for the value of the availability of an employer-provided automobile. However, if an employee has a percentage of personal use imputed to him but has records indicating less personal use than was imputed, can he not use cents per mile to his personal tax return? For example, an employee has 30% personal use imputed to him and he has records indicating only 20% personal use. Can he take the additional 10% as cents per mile? Also in the appropriate situation could an employee use the cents per mile rate for medical or charitable as a deduction against the imputed value of personal use?

(15) The proposed regulations allow for an employer to impute 100% of the value of the road vehicle to the employee if the employee's wages exceed the FICA base. There is no authority in the legislation supporting a regulation of this nature.

(16) The proposed regulations state that once a taxpayer has made an election to satisfy the recordkeeping requirements by one method he cannot later amend. A taxpayer may be eligible to use the 80% business use exception but decides to keep records to substantiate a 90% business deduction. Later, if these records are declared inadequate for some reason, the taxpayer should have the option to amend to retain some portion of the business deduction.

(17) Many companies have large numbers of cars and the burden of administering the personal use and the valuing of each automobile is too great if a cents per mile cannot be used. We ask that the cents per mile rate which has been used for so long be once again restored.

(18) Great inequities between taxpayers are created when one is required to drive a more expensive vehicle than another. If one taxpayer must drive an expensive vehicle he must carry certain equipment he is being imputed a greater value than if he drove a smaller less expensive vehicle for the same amount of personal use. A great concern of the employers is that the employee may refuse to have an expensive vehicle available to him for personal use and the employer will have to incur expense to garage the vehicles. The irony being that the most expensive vehicles needing the most protection from vandalism will not be candidates going to the employees home.

(19) For purposes of valuing travel by company plane, the definition of key employee is not clear. The definition should not be just the senior person on the plane

at that moment. Rather a key employee should be the one who can call up the use of a company plane without prior approval.

(20) It is not clear what is meant by "for primary business purpose" in regards to using company planes. Further explanation must be given for this definition.

(21) There is a problem with using an equivalent charter rate when valuing use of a company plane because the charter rate includes a profit for the charter company, not just the cost of the plane.

(22) The guest or family of a key employee traveling on a company plane requires imputing three times first class rate (600% SIFL). This appears to be an excessive value and should be reduced.

(23) It seems inconsistent that an empty seat on an airline plane has a different value than an empty seat on a company plane. Equivalent benefits should be treated equally.

(24) When considering the need and value of travel by company plane security reasons could be a consideration.

The Chairman, in addition, my bill would provide that no amount shall be included in gross income as a fringe benefit by reason of the use of any vehicle owned by any governmental unit or agency.

The IRS rules obviously put a cumbersome and costly record-keeping requirement on all levels of government, and could adversely affect the delivery of certain emergency services. In addition, to force a massive data collection and reporting burden on these entities is obviously uneconomical and counter-productive.

Mr. Chairman, at this point I include extraneous matter, including letters from Oklahoma Governor George Nigh and Oklahoma City's City Manager, Scott Johnson.

Thank you, Mr. Chairman. I urge the Committee to join in repeal of these costly and burdensome regulations.

[Attachment]

STATE OF OKLAHOMA,
OFFICE OF THE GOVERNOR,
Oklahoma City, OK, January 22, 1985.

HON. MICKEY EDWARDS,
2434 Rayburn Building, Washington, DC.

DEAR CONGRESSMAN EDWARDS: Enclosed is a copy of my letter to Secretary Donald T. Regan concerning the actions of the Internal Revenue Service under the Tax Reform Act of 1984 shifting certain income reporting requirements.

I hope you can be supportive of our effort to return to a reasonable approach.

Sincerely,

GEORGE NIGH, Governor.

[Attachment]

STATE OF OKLAHOMA,
OFFICE OF THE GOVERNOR,
Oklahoma City, OK, January 23, 1985.

HON. DONALD T. REGAN,
15th and Pennsylvania Avenue NW,
Washington, DC.

DEAR MR. SECRETARY: As you are aware, the Internal Revenue Service recently issued temporary regulations (Vol. 50, No. 4, Federal Register dated January 7, 1985) delineating an involved procedure for the reporting of fringe benefits as imputed income, and for employer withholding and remitting of federal income tax on the imputed income. The regulations make no distinction between public and private sector employers. Whatever the worth of the regulations as they pertain to the private sector, I believe they are an unnecessary imposition and an unwarranted intrusion into the business of state and local governments.

Private sector employers may have viewed vehicle assignments as an inexpensive means of awarding additional employee compensation. Public sector employers have no "tax write-off" advantages. Speaking for the State of Oklahoma, our state law provides that only those employees subject to call 24 hours a day are permitted to drive a vehicle between their residence and their assigned place of employment. All personal use is specifically prohibited. To subject Game Rangers, Highway Troopers, Department of Labor Investigators, etc., to a taxable imputed income is unwarranted. To force a massive data collection and reporting burden on a governmental entity is uneconomical.

I strongly urge you to suspend the regulations or so much of them as pertain to public sector entities. I am attaching a copy of Oklahoma Statutes concerning the

use of state-owned vehicles, I hope they add clarity to my comments. I will be happy to answer any questions you might have, or have a member of my staff supply you with any additional information that we have and you might wish.

Sincerely,

GEORGE NIGH, *Governor*.

Attachment.

CHAPTER 55.—STATE-OWNED AUTOMOBILES

Sec.

- 151. Marking of automobiles owned by state.
- 152. State Board of Public Affairs—Duty.
- 153. Driving of unmarked automobiles prohibited—Exception as to vehicles to Bureau of Criminal Investigation.
- 154. Use of state-owned automobiles for private purposes.
- 155. Misdemeanor—Violations of act—Penalty.
- 156. Purchase of automobiles or buses with public funds, except for certain departments, prohibited.
- 156.1 Use of state-owned motor vehicles for private use prohibited—Penalty—Exceptions.
- 156.2. Repealed.
- 156.3. Purchases of motor vehicles necessary for performance of official duties permitted—Color—Marking—Size of lettering.
- 157.1. Insurance on Department of Transportation, Board of Agriculture and Department of Human Services vehicles—Kinds and amounts.
- 157.2. Bids on insurance.
- 157.3. Actions to be brought against insurer.
- 157.4. Venue of actions.
- 157.5. Definition.
- 158.1. Insurance on other state-owned vehicle and equipment—Kinds and amounts.
- 158.2. Maintenance of actions.
- 159.1. State Motor Pool—Creation—Control and regulation.
- 159.2. Definitions.
- 159.3. Acquisition of vehicles—Transfers—Assignment of transportation.
- 159.4. Maintenance, storage, repair, etc.
- 159.5. Director and other personnel.
- 159.6. Privately-owned vehicles—Uses.
- 159.7. Use of state vehicles for private purposes prohibited.
- 159.8. Marking of vehicles.
- 159.9. State Motor Pool Fund—Petty cash fund.
- 159.10. Reports to Governor.
- 159.11. Exemptions.

§ 151. Marking of automobiles owned by state

A. On each side of every state-owned automobile shall be painted the words "State of Oklahoma" in conspicuous letters at least three (3) inches in height and the name of the department or institution by which said automobile is used in conspicuous letters at least two (2) inches in height, except that vehicles used regularly as patrol units shall be distinctively painted black and white and shall bear the wording "Oklahoma Highway Patrol" on each side of the vehicle in letters of such size as to be easily distinguishable, it being the purpose and intention of the Legislature that said patrol units shall be marked in the future in the same manner as those now in use. The Commissioner of Public Safety is hereby authorized to designate colors and markings, in lieu of those authorized by the provisions of this section, for patrol units used for patrol purposes and for selective traffic law enforcement.

B. Vehicles purchased by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in undercover investigations and vehicles purchased by the Oklahoma state Bureau of Investigation shall not be subject to the provisions of this section.

(Amended by Laws 1984, c. 240, § 5, operative July 1, 1984. Approved May 29, 1984 Emergency.)

§ 152. Office of Public Affairs—Duty

It shall be the duty of the Office of Public Affairs to have painted on every state-owned automobile the letters and words required by the provisions of Section 151 of this title when any such automobile is presented to said Office of Public Affairs for said purpose.

(Amended by Laws 1983, c. 304, § 22, eff. July 1, 1983.)

§ 153. Driving of unmarked automobiles prohibited—Exception as to vehicles for Bureau of Criminal Investigation

It shall be unlawful for any person to drive any state-owned automobile at any time and for any purpose, on any street or highway within this state, unless the provisions of section one (1) hereof, have been strictly complied with, provided, however, the Commissioner of the Department of Public Safety is hereby authorized to set aside not to exceed eighteen automobiles for use by his department so that the

same may be available to the Bureau of criminal Investigation without identifying marks thereon. Laws 1923-24, c. 86, p. 103, § 3; Laws 1949, p. 336, § 2.

§ 154. Use of state-owned automobiles for private purposes

It shall be unlawful for any person to drive any state-owned automobile, on any street or highway within this state, for any purpose other than in the performance of the duties of such person as an officer or employee of the State of Oklahoma. Laws 1923-24, c. 86, p. 103, § 4.

§ 155. Misdemeanor—Violations of act—Penalty

Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days, nor more than six (6) months, or by both such fine and imprisonment.

§ 156. Purchase of automobiles or buses with public funds, except for certain departments, prohibited

Unless otherwise provided for by law, no state board, commission, department, institution, official, or employee, except the Department of Public Safety, the Department of Human Services, the Department of Wildlife Conservation, the Department of Corrections, the State Department of Education, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma State Bureau of Investigation, and the Transportation Commission, shall purchase any passenger automobile or bus with public funds. The Oklahoma School for the Deaf at Sulphur, the Oklahoma School for the Blind at Muskogee, and any state institution of higher education may purchase, own, or keep if now owned, or acquire by lease or gift, and use and maintain such station wagons, automobiles, trucks, or buses as are reasonably necessary for the implementation of the educational programs of said institutions. No bus operated, owned, or used by such educational institutions shall be permitted to carry and person other than students, faculty members, employees, or volunteers of such institutions. The provisions of this section shall not be construed to prohibit the operation of intracampus buses or buses routed directly between portions of the campus of any institution not adjacent to each other, nor to prohibit the collection of fares from such students, faculty members, or employees of such institutions, sufficient in amount to cover the reasonable cost of such transportation. The J. D. McCarty Center for Handicapped Children, the Oklahoma Department of Libraries, the Oklahoma Department of Veterans Affairs, and the Oklahoma Veterans Centers may own and maintain such passenger vehicles as those institutions have acquired prior to May 1, 1981.

The use of station wagons, automobiles, and buses, other than as provided for in this section, shall be permitted only upon written request for such use by heads of departments of the institution, approved in writing by the president of said institution or by some administrative official of said institution authorized by the president to grant said approval. Such use shall be permitted only for official institutional business or activities connected therewith. Such use shall be subject to the provisions of Sections 156.1 and 159.7 of this title forbidding personal use of such vehicle, and to the penalties therein declared. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, as provided for in Section 156.1 of this title.

(Amended by Laws 1982, c. 287, § 42, operative July 1, 1982; Laws 1984, c. 161, § 2, emerg. eff. May 1, 1984; Laws 1984, c. 240, § 6, operative July 1, 1984, approved May 29, 1984 Emergency.)

§ 156.1. Use of state-owned motor vehicles for private use prohibited—Penalty—Exceptions

A. It shall be unlawful for any state official, officer, or employee, except those officers or employees authorized in subsection B of this section, to ride to or from his place of residence in a state-owned automobile, truck, or pickup, except in the performance of his official duty, or to use any such automobile, truck, ambulance, or pickup for other personal or private purposes. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00) or by imprisonment in the county jail for a period to not exceed thirty (30) days, or by both said fine and imprisonment, and in addition thereto, shall be discharged from state employment.

B. Any state employee who receives emergency telephone calls regularly at his residence when he is not on duty may be permitted to use a vehicle belonging to the

State Motor Pool Division of the Office of Public Affairs, as created in Section 159.1 of this title, to provide transportation between his residence and his assigned place of employment, provided such distance does not exceed fifty (50) miles in any round trip.

The principal administrator of the state agency with which such employee is employed shall so designate the employee's status in writing to said Division, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

(Amended by Laws 1983, c. 304, § 23, eff. July 1, 1983)

§ 156.3. Purchase of motor vehicles necessary for performance of official duties permitted—Color—Marking—Size of lettering

This act shall not apply to and shall not be so construed as prohibiting the purchase and use of trucks or pickups by state departments, institutions or agencies when such trucks or pickups are necessary for the performance of their official duties, provided that all such trucks and pickups owned and operated by the State Highway Commission shall be painted yellow, and all state-owned motor vehicles (except ten automobiles in the Department of Public Safety) shall be plainly marked, in letters not less than four (4) inches in height, with the words "State of Oklahoma" followed by the name of the appropriate department, institution or agency operating such vehicle.

[Attachment]

THE CITY OF OKLAHOMA CITY,
OFFICE OF THE CITY MANAGER,
Oklahoma City, OK, January 30, 1985.

DAN NISSENBAUM,
I.C.M.A., Washington, DC.

In the January 21, 1985 "ICMA Newsletter", information concerning the different aspects of the proposed taxes for use of municipal vehicles was requested. The following is for your review:

Attached is a list of the various types of cars and trucks assigned to departments in the City of Oklahoma City. Individuals are required to utilize these vehicles after hours, because the employees are on emergency or 24 hour call. This is not a benefit to the employees, but rather a convenience and benefit for the City.

Because the vehicles are for 24 hour or emergency use, the automobile or truck has many types of equipment needed for quick responses. Radios, when installed, make it possible for work to occur while the employee is enroute to the emergency.

Many employees use their assigned car or truck to check worksites before coming to the office or after leaving the office. Greater productivity is achieved since employees do not lose time driving to the office and then going back out into the city.

The vehicles all have City seals on them. A great amount of public visibility and possible sense of security is gained by these vehicles being in neighborhoods after hours.

All personal use of the vehicles is forbidden by City Charter and policy.

In summary, to tax municipal employees for using a vehicle to increase their productivity and their ability to respond to emergencies, is not in the best interest of the nation's municipalities.

Your help and interest in this matter is appreciated. The staff will provide additional information as needed.

SCOTT JOHNSON,
City Manager.

Attachment.

VEHICLES ASSIGNED ON A 24-HOUR BASIS

Department	Auto	Truck
City manager.....	3	NA
Municipal counselor.....	1	NA
Personnel.....	1	NA
City clerk.....	1	NA
Human resources.....	1	NA
Safety and emergency.....	5	7
Public services.....	8	36

VEHICLES ASSIGNED ON A 24-HOUR BASIS—Continued

Department	Auto	Truck
Community development.....	80	9
Water resources.....	17	34
Police.....	43	5
Fire.....	26	2
Airports.....	3	11
Public events.....	4	2
Parks and recreation.....	7	8
Criminal justice.....	1	NA
Total.....	201	114

GRAND PRAIRIE, TX.

DEAR MR. FROST: In your last letter, you ask me to write a letter concerning the IRS regulation of personal mileage use of company truck. This is it. For 17 years my husband has worked for the same company and has driven a company truck as part of his salary, now you people tell us that we must pay to drive it. Not to the owner of the car or truck mind you, but to IRS. This is bull. The president said he would not raise our tax. He did not raise them, he just let you people invent new one's. This new tax is hurting the middle man very much. We barely make it by every April 15 and now you want more.

Do you realize without a set amount put down, how open we are to the companies we work for. On my husband's work sheet we pay for mileage, depreciation repairs and all, because the company, IRS, and it seems everyone involved with this doesn't know what to say other then "fair market value." The company then uses their percent as a tax write off. We are informed, we cannot. Mr. Frost you and other people in your position are there to help us. If you let this regulation continue, then I can't see where that so called help is at.

I understand our government must have tax monies, but if they would use it right, we'd have enough. "Example," my husband does work on public highways sometimes. Because so much money was allotted to this stretch of road, they used time, money & material when it did *not* need all this. I don't know why you let this go on and on. I hope this letter does not anger anyone as I am angry enough for all.

Thank you for your time.

MARY ELLIOTT.

STATEMENT OF HON. BILL EMERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. Chairman, I join my Colleagues in protesting the Internal Revenue Service regulations regarding "adequate contemporaneous records". I have been flooded with complaints about the new regulations requiring taxpayers to keep extremely detailed records on farm and business use of property. And frankly, while the IRS modifications to the original proposed rules are an improvement, they are simply not good enough.

We can all agree that the federal government has an obligation to do its best to collect the taxes that it is rightfully owed. However, the methods it uses to collect those taxes must be kept in line with common sense. Certainly, forcing automobile users to keep absurdly detailed and accurate records of every mile that contributes to their making a living is ridiculous.

The overwhelming majority of people pay their fair share of taxes and do their best to keep adequate records. Hard-working, honest Americans do not object to fair taxation—however, they strongly oppose excessive and unnecessary record-keeping, and rightly so. We simply should not discourage our law-abiding citizens by unduly burdening them with more and more paperwork.

I have been overwhelmed by the sense of betrayal that has been communicated to me by Missourians as the result of these regulations. The people have held in good faith our supposed commitment to reducing bureaucratic red tape. Much has been said about how much has been accomplished in combatting the tremendous paperwork requirements of the federal government. Then, suddenly, another paperwork

nightmare hits—requiring when, who, where, why, and how far for each and every business use of an automobile or other property. Businessmen are left faced with spending more time recording than it takes to drive the trip. It certainly isn't any wonder why there is confusion about whether we are truly interested in decreasing burdensome paperwork.

If these regulations are permitted to stand, bookkeeping will become a monumental and overwhelming task for many small businesses and farmers. Those struggling to make ends meet and earn a decent living simply cannot afford to spend extra time and energy logging mileage rather than putting their resources to meeting the basic demands of the work day.

I am also concerned about those people in my largely rural, agricultural district that are not even aware that they should be keeping logging records. The new IRS provisions are retroactively effective to January 1, 1985.

I have no doubt that there are those who will be understandably upset and frustrated next year when they must produce records substantiating their tax deduction and will not be able to do so.

The senseless logging requirements are counter-productive. Mileage logging will cost the consumer at least \$7 billion. We simply should not abuse the American taxpayers' time and money by allowing these outrageous rules to stand. Let's return to the old system that treated the taxpayer public equally by simply requiring taxpayers to keep "adequate records" or "sufficient evidence" in order to take advantage of business deductions.

I urge my Colleagues to work to repeal the IRS regulations, and I am hopeful that the Committee on Ways and Means will take prompt action to eliminate these burdensome and unnecessary logging regulations.

Thank you.

FIRST THRIFT OF AMERICA,
Huntington Beach, CA, February 28, 1985.

JOSEPH K. DOWLEY,
*Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.*

DEAR MR. DOWLEY: This letter is in regards to the hearings scheduled for March 5, 1985 on the issue of the Treasury Department's revised temporary and proposed regulations relating to the record keeping requirements for automobiles and certain other property.

The temporary and proposed regulations issued by the Treasury Department, went a long way in alleviating much of the tedious work necessary in maintaining records. However, for many these did not go far enough. I as a businessman, as well as my colleagues, still must maintain these burdensome records. This puts a tremendous strain and burden on our day-to-day operations and hampers our ability to conduct business.

Furthermore, these regulations did not address the areas of computers in the office. True there may be some abuses for computers in the home, but for many of us where the computer is located at the office, this is a burden and time consuming chore. These requirements force us to lower our productivity as well as decrease the willingness to use the computer in our office. I believe this is true for most businesses, as personal computers are now becoming a necessary tool and more prevalent than ever.

I also believe that these requirements will not deter the abuses and are also non-enforceable. For a few who have a lot to gain from these deductions, there is nothing to prevent them from waiting until an audit and then hiring an individual to create a log. But in the meantime, for many of us who are honest, this still penalizes us for the few and restricts our productivity.

I therefore respectfully submit to you that the only logical and reasonable solution to this problem is a total repeal of these requirements. Thank you for your time and opportunity to express my views and that of my colleagues for inclusion in the hearing.

Respectfully yours,

HIDE IGAWA, *Controller.*

**FOODSERVICE & LODGING INSTITUTE,
Washington DC, March 1, 1985.**

Hon. DANIEL ROSTENKOWSKI,
Chairman, House Ways and Means Committee, Longworth House Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: The Foodservice & Lodging Institute is a trade association of forty-four of the nation's largest multi-unit restaurant, food service and hotel companies. Its members own and lease thousands of automobiles, vans, and trucks for use in their business, ranging from delivery and service vehicles through sales representatives' cars and executive limousines. These vehicles are all subject to IRS's new and burdensome temporary regulations on recordkeeping.

We understand that the Ways and Means Committee will hold hearings on the impact of the new "contemporaneous records" requirement for deductibility of the expenses of automobiles and other vehicles used in business. We wish to go on record as vigorously supporting the numerous proposals to repeal this new requirement, i.e. repeal of section 179(b) of the Tax Reform Act of 1984.

Few provisions in recent tax legislation have resulted in such extensive, burdensome, confusing, and unnecessary regulations by the Internal Revenue Service. The three separate sets of temporary regulations now in effect cover dozens of pages of the Federal Register. IRS's most recent changes in these regulations, an attempt to forestall thoughtful legislative consideration of the issue, have served only to add confusion to employers' attempts to ascertain their obligations. In fact, the new rules do little to relieve the business community of the unnecessary burdens devised by the service in stretching the legislative language far beyond any reasonable intent.

We would emphasize that our "industry does not dispute the duty of employees to substantiate the deductibility of automobiles and other motor vehicles. Such substantiation does not, however, require the extensive paperwork envisioned by the IRS. Rather, the business use of cars may be adequately documented under the statute prior to amendment. Our industry is fully willing and able to accept responsibility for maintaining accurate records or similarly adequate substantiation, as under prior law.

We would be happy to provide any further information you may find useful in this regard.

Sincerely,

WILLIAM G. GIERY, *Executive Secretary.*

STATEMENT OF RICHARD A. BOYD, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE

Mr. Chairman and members of this distinguished committee, law enforcement does not feel that it was the intent of Congress in the Deficit Reduction Act of 1984, to require the police to comply with the record keeping requirements of the "temporary rules" of the IRS. Further, law enforcement does not feel it was the intent of Congress for "law enforcement vehicles" to be even considered part of "those significant numbers of vehicles in non-compliance with the prior law".

In other words, speaking for the police, we don't know what we're doing here in the first place. The "temporary rules" on recordkeeping, including the broad coverage of police vehicles, has raised considerable havoc in the law enforcement community. Specifically, it is unreasonable of the IRS in its rule making on record keeping, to expect that the "NARC", making undercover investigations, to differentiate between personal and company mileage on a vehicle that he is required to drive, day and night, not necessarily for commuting, for the specific purpose enforcing the laws of this land. It is more unreasonable to expect that the officer be taxed for the use of the vehicle when the vehicle is a tool of the trade and not an optional, or personal preference, tool at that!

It is unreasonable to expect that the Sheriff, Municipal Officer, or State Trooper, who is required to take a "marked emergency vehicle home, as a condition of their employment, to differentiate between personal and business usage of that vehicle when the major point of crime and accident prevention is to see police vehicles on the street, regardless of the purpose for which the vehicle is being used. It is more unreasonable to tax the officer, at a commuting or fair market value rate, for the use of that police vehicle, when the clear intent of Congress in 1984 was to eliminate abuses, not put law enforcement programs in jeopardy.

Mr. Chairman, the ramifications of the proposed regulations on record keeping, and on the entire taxation of the use of police vehicles, is a burden that the law enforcement community does not need at this time. In case no one has heard, we

are gaining on crime in general, but still losing the narcotics war, and law enforcement at all levels does not need the added burden of Federal paperwork and we certainly don't need to tax the officers additionally for agreeing to do a tough job.

The Fraternal Order of Police submits that law enforcement currently keeps adequate records on the use of their public agency vehicles by recording the mileage and nature of use on daily activity reports required of all law enforcement personnel. The requirement of further record keeping by the Federal Government would be redundant, since the employing agency has a better grasp on the control of employer-provided automobiles, and the associated record keeping, than does the IRS.

The Fraternal Order of Police requests that this distinguished committee consider legislation which not only exempts law enforcement from the record keeping provisions of the IRS temporary rules, but that you exempt law enforcement public vehicles from the taxation provisions of the rules. These temporary rules concerning law enforcement public vehicles threaten to:

A. Affect the safety of the public and other law enforcement officers by reducing the availability of these law enforcement public vehicles;

B. Affect the continuance of effective crime prevention and crime fighting, as well as accident prevention programs; and

C. Over ride the public policy of many agencies who feel that they should determine the most cost effective use of law enforcement public vehicles.

Please give us an affirmative response to a very real problem. Please expand the scope of these hearings to consider those classifications of public vehicles which should be exempt from IRS taxation rules.

STATEMENT OF WARREN Y. JOBE, EXECUTIVE VICE PRESIDENT OF FINANCE, GEORGIA POWER CO.

My name is Warren Y. Jobe, executive vice president of finance for the Georgia Power Company [GPCO]. I wish to thank Chairman Rostenkowski and the members of the Committee on Ways and Means for their willingness to address the record-keeping requirements related to automobiles and certain other property that were brought about by the Tax Reform Act of 1984. GPCO is an investor-owned electric utility which serves over 1.3 million customers in the State of Georgia. It is the largest of four operating subsidiaries of the Southern Company. Like many other large utility companies, GPCO's employees operate a large fleet of vehicles (approximately 1500) while serving our customers over our approximately 57,000 square miles of service area. In my testimony, I would like to focus on the excessive administrative burden and unnecessary cost imposed on our company and our customers by the current record-keeping requirement.

Over one-half of our passenger vehicles are utilized by employees subject to twenty-four hour emergency call. These employees are regularly and routinely summoned at irregular hours to supervise or assist in the restoration of electric service, protection of property, prevention of personal injury or death, or other essential company business. We believe that these employees should not be penalized for their nominal personal use of company vehicles.

Most of the remaining vehicles GPCO operates are assigned to employees whose jobs require extensive travel within GPCO's service area. Additionally there are some automobiles assigned to management or are available as "pool" cars for emergency business use. These vehicles are used for various business functions including travel to construction sites, division offices, inter-office and other similar requirements. In the majority of cases, these vehicles are used strictly for business purposes. GPCO, like other major utilities, maintains detailed company policies restricting the use of most of these vehicles primarily to business use and requires adequate records that substantiate such use. We strongly believe that the prior law governing deductible travel expenses, requiring substantiation of amount, time, place and business purpose of travel, provides for adequate record-keeping requirements. The congressional committee report of the conferees who drafted the record-keeping requirements in the Tax Reform Act of 1984 stated that records should ".... reflect with *substantial accuracy* the business use of property (emphasis added)". We believe that this goal was sufficiently accomplished by prior law. We do not believe that hundreds of employees within GPCO. (And literally hundreds of thousands more utility employees nation-wide), whose primary use of vehicles in their jobs are business-related, should have to painstakingly maintain daily logs of each use of a particular assigned vehicle.

While it is true some personal use of company-owned vehicles does occur, we feel that more reasonable means should be allowed for identifying and attributing

income to those incurring both personal and business use of vehicles. Such means could perhaps include broader use of safe-harbor limits similar to those prescribed by the recent temporary and proposed Treasury regulations for sales personnel, allowing for determination (on an annual basis) of normal commuting miles by employees allowed personal use of vehicles, or other similar approaches which would be characterized by less complexity and much less onerous record-keeping requirements.

Such stringent tax compliance measures as those now in place requiring burdensome daily logs cost much more than they produce in additional revenue and substantially inhibit employee productivity and morale. In fact, we estimate GPCO's cost in non-productive time alone will be over one million dollars annually. The regulations supporting the record-keeping requirements brought about by the Tax Reform Act will not only prove to be expensive and burdensome to millions of Americans, but will likely be tremendously difficult to police by the IRS.

Therefore, it seems highly unlikely that any significant increases in revenues to the U.S. Treasury would be forthcoming from these new rules. For these reasons, we urge those on this committee to support repeal of the present record-keeping requirements relative to vehicles used for both business and personal use and development of a more realistic and reasonable approach to taxation of personal use of company vehicles. While the requirements applicable to other property (such as personal computers—PCS) are not currently of the same magnitude to GPCO. As those related to automobiles, we feel that similar problems (I.E., cost, difficulty in enforcement, etc.) exist in this area. Like almost all other businesses, the use of PCS at GPCO is growing at a tremendously rapid pace. We would again urge a more realistic and reasonable approach in substantiation of personal usage of such property. In any event, the requirement to log all usage of company vehicles or other property must be repealed in order to restore some sense of reason and common sense to the regulations. Thank you for the opportunity to register our comments with your committee.

GERHARDT & PUCKETT,
Amarillo, TX, February 28, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.

DEAR MR. DOWLEY: If you find it appropriate, please include this letter in the written statements for the hearing on the record keeping requirements for automobiles and certain other property to be held March 5.

The big problem with the temporary and proposed regulations as they now stand is not in the area of the required record keeping but is in the method of "pricing" the personal use portion of the vehicles. In order to be "evenhanded and fair", the method of pricing should be the same as what is allowed for business use deductions whether it is by mileage or actual cost. The pricing by reference to fair market lease value creates a second standard that creates confusion, costly records and potential unfairness.

Sincerely yours,

JOHN W. PUCKETT.

FARMERS BRANCH, TX, March 5, 1985.

Hon. MARTIN FROST,
24th District, Texas, Longworth House Office Building, Washington, DC.

DEAR MARTIN: Thank you for offering me the opportunity to express my written comments to the House Ways & Means Committee public hearings on the new IRS regulations.

Being an outside sales person for a paper mill, I use a company-provided automobile. It is a required item for my livelihood. I think it is unrealistic to add an additional burden with more record keeping to all the other regulations we must live by as citizens of this country. If you had access to my IRS records, you would see that I certainly have paid my fair share of taxes over the total span of my working career. I am certainly not interested in paying any additional taxes. What I pay to the government is by far the single greatest expense of my household.

I commend Congress on its efforts for deficit reduction but I think the reduction must come from less spending rather than trying to increase your revenues. Being

in public office myself, I don't believe the American people are willing to spend more money on taxes.

Thank you for keeping us informed and keep up the good work.

Sincerely,

WILLIAM GLANCY,
Mayor pro tem.

GOSHEN CUSHION, INC.,
Goshen, IN, March 1, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Way and Means, House of Representatives, Longworth
Office Building, Washington, DC.

DEAR MR. DOWLEY: I want to offer your committee my thoughts on the Treasury Department's revised temporary and proposed regulations relating to the record-keeping requirements for automobiles.

Goshen Cushion, Inc., is a small manufacturing company with facilities in Goshen, Indiana, and Watkinsville, Georgia. We build seating products for recreational vehicles and more precisely the van conversion industry. Goshen Cushion provides over 200 jobs to these two communities and owns and operates a fleet of six delivery trucks and four salesmen's vehicles. We have more than 500 customers, over one-half of whom are within 100 miles of one of our two plants. Each and every vehicle owned by Goshen Cushion is vital to the successful continued operation and profitability of this company. To remain competitive in our business, we must have the capability to deliver our product to our customers on a daily basis. Our sales vehicles provide essential transportation to our sales staff to call on customers, demonstrate our seating products installed in our vehicles, and to respond to their emergency production problems with installation of our product.

We appreciate the department's revisions that no longer make it necessary to maintain log books for our delivery trucks. It is no longer necessary for us to pay our truck drivers the additional wages required to compensate them for the 30 minutes each day they had spent completing their log books for their numerous stops. Again, I thank you for this very reasonable regulation revision.

However, our sales staff (one of the smallest and yet most vital departments in our company) is still required to maintain logs for each and every call or stop they make. These are the people that I expect to efficiently respond to customer needs and problems. Their days are totally occupied with new problems and situations and yet, they are required (in order to satisfy Treasury Department regulations) to set aside time in each busy day to fill in their log books. There simply is not enough time in a work day to complete normal duties, let alone maintain records in order to enable Goshen Cushion to deduct the full amount of vehicle expense to which it is entitled.

These vehicles are indispensable to our company. However, the log book for each vehicle will no doubt reflect a small percentage of personal use by our employees. We are being required to report this amount of personal use as compensation and to withhold related taxes from their current wages. This is an unreasonable additional burden on our accounting and payroll department. This staff of three people has managed to efficiently process all paperwork and payroll for both of our plants. They have been able to do this largely because of our computer system which generates all payroll reporting information required by the Internal Revenue Service and various state and federal agencies. These reports will now require time consuming manual adjustment to reflect the small portion of "additional compensation" and withholding related to minimal personal use of our vehicles.

For Goshen Cushion, the costs of the additional recordkeeping and reporting still far outweigh the insignificant benefits to the Treasury Department. We have never purchased exorbitantly expensive automobiles. We purchase what we feel we need to properly service our customers. The depreciation write-off limit of \$6000 per automobile each year is quite reasonable. The requirement to maintain daily log books is not reasonable, but is an aggravation and a costly inefficient waste of time.

Other companies in our community have completely disposed of their fleet of salesmen's automobiles. This will create a rippling effect on the rest of the economy as fewer automobiles are replaced each year. These companies have chosen to require their employees to maintain logs on their own time. I do not agree with this policy and feel Goshen Cushion must continue to own our vehicles.

I realize we are only one small company in the U.S. economy, but I believe there are thousands of companies and businesses across the country in situations very

similar to ours. The wasted time and additional costs of meeting this new requirement must be astronomical for all of these companies combined. Please do whatever you can to eliminate this waste.

Sincerely,

KENT F. BRECHTEL, *President.*

STATEMENT OF ROY LITTLEFIELD, EXECUTIVE DIRECTOR, GREATER WASHINGTON/
MARYLAND SERVICE STATION ASSOCIATION

Mr. Chairman and members of the Committee, I appreciate this opportunity to submit testimony in opposition to the Treasury Department's revised temporary and proposed regulations relating to the record keeping requirements for automobiles and certain other property. My name is Roy Littlefield and I serve as executive director of the Greater Washington/Maryland Service Station Association. GWMSSA is a regional nonprofit trade association representing over 1,000 small business located in the District of Columbia and the State of Maryland.

We applaud Chairman Rostenkowski for calling this hearing. The chairman has correctly observed "that some taxpayers with legitimate business expenses may be facing unduly burdensome record keeping requirements as a result of the new law."

Under prior law, a taxpayer was required to substantiate any claimed deduction for travel expenses, entertainment, recreation, or gifts by adequate records or other evidence. Taxpayers who could reasonably reconstruct these expenses could claim a deduction. These records were required to show the amount, time, place and business purpose of the expenses (code section 274(d)).

Section 179 of P.L. 98-369, the Deficit Reduction Act of 1984 (the act) amended prior law to require taxpayers to substantiate, with adequate contemporaneous records, any claimed credit or deduction: (1) with respect to the business use of listed property, that is, automobiles, other transportation vehicles, any property generally used for entertainment, recreation, or amusement, any computer equipment, and any other property specified in regulations; (2) with respect to traveling expenses (including meals and lodging while away from home); (3) for any entertainment, amusement or recreation expense, including use of a facility for such purpose; and (4) for any expense for gifts. These record keeping requirements are effective for taxable years beginning after 1984.

GWMSSA would like to go on record in opposition to the new regulations. Many small businessmen operate company vehicles not so much as a fringe benefit, but as a necessary tool of doing business. To place further and excessive paperwork requirements on the small businessman who is already overwhelmed by government regulations and paperwork seems unreasonable.

The new regulations have placed burdensome record keeping requirements on employers and employees, and is viewed by many as a further example of big government imposing on the small business community another obligation in a mass of federal rules and requirements.

GWMSSA urges that this regulation be rescinded. If you decide that records of vehicle use must be retained, we urge you to ease the burdensome record keeping requirements by requiring the recording of personal use only.

BIG SPRING, TX, February 26, 1985.

JOSEPH K. DOWLEY,
*Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.*

GENTLEMEN: There has not been a gross overstatement in automobile or other expenses reported on Federal income tax returns. This has been a beautiful blackmail area for the I.R.S. agents. If an individual files a good clean return, the revenue agent can always assess the taxpayer for a few extra dollars in taxes for failure to prove automobile expenses.

Your new law is merely a detestable way of increasing taxes without calling it a tax increase.

Your truly,

MAXWELL D. GREEN,
Certified Public Accountant.

GREENAWALT & Co.,
Mechanicsburg, PA, February 18, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.

DEAR SIR: When considering possible repeal of the I.R.S. record-keeping requirements for vehicles, etc. on March 5, 1985, I would hope the committee will keep in mind what an onerous regulation this is.

While I certainly recognize the need for elimination of the abuse of personal use of company-owned vehicles, this tremendous paperwork is *not* the answer. In the past, the I.R.S. has looked closely at the *reasonableness* of personal and/or business use of vehicles and there is no reason why that cannot continue.

In addition, the requirement that tax return preparers are made the enforcers under this law is completely unacceptable.

Accordingly, I urge complete repeal of these requirements.

Very truly yours,

C. EDWARD ROGERS, Jr., Partner.

STATEMENT OF T.R. GRIMMETT, GRIMMETT & Co., LAS VEGAS, NV

I am an accountant for a number of small businesses in the Las Vegas, Nevada area. My clients are very disturbed by the recordkeeping required by the IRS on the business use of vehicles. Small business men and women often act as their own sales force, personnel managers, bookkeepers and janitors. Much of the current record-keeping requirements with regard to payroll taxes and income taxes is so complex that they must hire specialists, such as myself, to make sure all reports and documentation are adequate and correct.

The recordkeeping required by the IRS for the business use of vehicles cannot be done by anyone other than the small business person themselves. They cannot hire it done for them. This additional burdensome paperwork can be excessively time-consuming to people who already spend a great deal more than the 8-hour, five-day workweek enjoyed by most Americans.

I would propose an alternative plan for keeping track of these vehicle expenses. My thinking would be to keep track of expenses by vehicle, then determining the business portion to be deducted by applying a pre-set percentage figure to those expenses. For example, heavy trucks are very rarely used for anything except business. Those expenses would be 100% deductible.

Salesmen automobiles do get used occasionally for personal use as a company benefit for the long hours they often work without receiving extra pay. In this case, perhaps 75%-80% of expenses, including depreciation and investment credit, would be deductible. The remaining 20%-25% could be either charged to the salesman as income, or expensed as an employee benefit in a fashion similar to health insurance premiums and retirement fund contributions.

Management often receive company cars so they can move about for the convenience of the company. Since a smaller percentage of the time is spent for company use, the percentage available for vehicle expense may be only 50%. Part of the remaining expenses could be charged as employee benefits and the balance as income to the manager.

SUMMARY

Expense records kept by vehicle would be substantially easier to keep and verify than mileage records.

Percentage figures are much simpler to compute than mileage variables.

Certain employees should be entitled to company car benefits because of the nature and degree of the responsibility they bear towards the over-all success of the business.

CONCLUSION

Present recordkeeping requirements are so complex that many people will refuse to keep them up, thus depriving them of real and legitimate business deductions. That, in turn, would cause them to shoulder a disproportionate share of the total tax burden.

STATEMENT OF JACK R. SKINNER, ASSISTANT VICE PRESIDENT—TAXES, HALLIBURTON Co.

Halliburton Company is pleased to submit comments on the proposed regulations under section 274(d) and 280F of the Internal Revenue Code. The issues raised are of great importance to Halliburton Company which has over 20,000 vehicles worldwide.

Halliburton is a major multinational company. Because it does not deal in consumer goods or services, it is possibly less well known than many others. So perhaps a few introductory remarks are in order. Halliburton was founded in 1920 as the Halliburton Oil Well Cementing Company. It has since expanded and grown into a diverse multinational company, is listed on the New York Stock Exchange and has operations in some 32 states and upward of 86 foreign countries. The main businesses of Halliburton are oil field services and products and engineering and construction services. Because less than 51 percent of its business is manufacturing, it is not listed among the Fortune 500 companies, although it ranks among them in size and many other attributes. It does make the Forbes Market Value 500 and placed 149th in assets, 66th in sales, 43rd in market value and 37th in profits.

A service oriented business such as Halliburton requires an extensive usage of vehicles. Many of the company's activities require employees to travel extensively on the job and to be available and on call 24 hours a day. For this reason many of the vehicles have 2-way radios for constant communication. Also many of the vehicles will be trucks and pickups equipped for job purposes which are not conducive or desirable for personal use. To a great extent travel is from job site to job site on a 24-hour-a-day basis. Very little of the vehicle mileage is for personal use. In fact, Company policy prohibits personal use except for commuting.

I will make my comments on a broad basis without making reference to specific code or regulation sections as I am sure you are aware by now of these references.

As to contemporaneous record keeping for automobiles, this is the type of bureaucratic paperwork requirement that most American businessmen and workers profoundly despise. When most Americans are already questioning the fairness of the tax system and some Gestapo tactics of the Internal Revenue Service is not a conducive time to introduce a paperwork requirement many times more burdensome than filing the annual Federal income tax return.

The maintenance of vehicle logs by service personnel of Halliburton who make multiple stops per day creates a major administrative burden on the employee and the employer. A safety hazard is also created for two reasons: (1) the employee will attend to the log while driving the auto, and (2) while working on a very technical job in a hazardous area he will have one more thing to distract his mind from the job at hand.

The company will have a costly administrative problem in gathering, checking, storing and maintaining a retention system on the logs.

Since these must be maintained for a six year adjustment period on each auto and since the I.R.S. is traditionally four to five years completing an audit, the logs must be kept for ten to eleven years. This is a problem businessmen do not need or appreciate.

Halliburton Company urges total repeal the contemporaneous record keeping requirements.

As to imputing income for personal use of automobiles, Halliburton has for many years done this. The amount imputed was based on estimated personal use times the rate set by the I.R.S. for deducting business use which is now 20.5¢ per mile. A method such as this could be audited by the I.R.S. as to reasonableness. To my knowledge the I.R.S. did not actively pursue the previously existing laws and regulations in existence to enforce the imputing of income for personal use of automobiles.

As to the safe harbor provisions set forth in the proposed regulations, the 70-30 provisions are unfair. A more appropriate percentage would have been 85-15.

The \$3 per day rate for Halliburton employees would be too high. These employees drive on an average of 30,000 to 40,000 per year. If only commuting is allowed for personal use, they would drive an average of 1,000 miles per year to and from work. Using the annual lease value tables (which are too high) the imputed annual income would be \$142 while the \$3 per day rate would result in annual imputed income of \$783.

Halliburton Company urges the the provisions of the Tax Reform Act applicable to imputing income to employees for personal use of automobiles be repealed.

As to corporate aircraft, these are business assets just like machines, buildings, etc. They are acquired to assist employees in performing their jobs for the benefit of the company, not for the benefit of the employees. For Halliburton Company sched-

uled personal use of company aircraft is nonexistent to rare. Company policy says the Company will be reimbursed when the aircraft is scheduled for personal use. The only type of personal use by employees is commonly known as the "empty seat" or "hitchhiker" situation. Most of these trips are between cities with little or no commercial airline services.

Halliburton Company feels that such no additional cost services should not be taxable to employees.

Also when a company can demonstrate that an aircraft is being used for bonafide security reasons, such travel should be considered as a working condition fringe benefit under I.R.S. section 132 and thereby excludable from employees' gross income.

Halliburton Company feels that services which are provided at no additional cost and use of aircraft for security reasons should not be taxable to employees.

Halliburton appreciates your consideration of these comments and would be pleased to answer any questions you may have with respect to these matters.

STATEMENT OF HON. W.G. (BILL) HEFNER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NORTH CAROLINA

Mr. Chairman, I thank the Committee for holding these hearings and for the opportunity to present to you my comments on a matter of paramount concern to a great many of my constituents.

On January 22, 1985 I introduced legislation to repeal the provisions of the Tax Reform Act of 1984 relating to the maintenance of contemporaneous records for vehicles used for both business and personal use. I did so not because I have a specific quarrel with the requirement that business use of automobiles, etc., constitute 50 percent or more for business purposes in order to be eligible for the investment tax credit and the accelerated cost recovery tax deductions, but because I do not believe that Congress intended the extremely burdensome paperwork requirements imposed by the section of the new tax law which mandates contemporaneous record-keeping.

Our aim should be to simplify the tax code and to make compliance less costly for small businesses and farmers, yet this provision places the greatest burden on these groups, forcing them to hire additional personnel just to keep the required records. As an illustration of the nuisance of the recordkeeping requirement, I am enclosing herewith a copy of automobile entries for the month of January made by a businessman in my district. Clearly, the recordkeeping requirements are quite meticulous, making it extremely difficult for small businesses to comply.

Law enforcement officials and service personnel find the requirements particularly troublesome. I have sought from IRS a more definitive answer to the question of determining commuting status for law enforcement officials and service personnel who often must make official stops or calls enroute to and from home. To date, IRS instructions for employees who are assigned vehicles for on-call duty have been vague and ambiguous.

Small businesses, farmers, law enforcement officers, and service personnel are not the abusers of the tax code in this instance, and they should not be asked to bear so unreasonable a burden. In the words of some of my constituents * * * "I don't believe that I have ever seen a better example of 'overkill'." * * * "This law is an absolute disincentive to anyone to use a company supported vehicle, and will ultimately have an effect on overall operating efficiency of this and other companies. Inefficiency directly affects costs and value to our customers." And in the words of a farmer. "In all the years of my life have I heard such cussing of the government as now. Farmers are raising Cain about it all over the place. It is bothersome, irritating, aggravative, and a few other adjectives."

Mr. Chairman, I believe it is imperative that Congress repeal this section of last year's tax bill immediately, returning the Tax Code to its original status with respect to the record required for backing up the tax deductions for mixed business and personal use of business owned property. I urge the Ways and Means Committee to immediately report legislation to the House to eliminate this terrible burden of record-keeping. I am confident it will receive a majority of support.

Month Ending January 31, 1985

Date	Day of Week	From:	To:	Mileage Reading		Deductible Business Mileage
				Beginning	End	
1/2	W	home to office	office	56,182	56,192	0
1/2	W	office	Pop. Dist. Bd. Meeting	56,192	56,196	4
1/2	W	meeting of Pop. Dist. Bd.	office	56,196	56,200	4
1/2	W	office	James Station	56,200	56,203	3
1/2		James Station	office	56,203	56,207	4
1/2		office	first ch. meeting	56,207	56,211	3
1/2		first meeting	office	56,211	56,214	3
1/2		office	W. & Mother's meeting	56,214	56,220	6
1/2		meeting	office	56,220	56,225	5
1/2		office	home	56,225	56,226	0
1/2	Th	home	office	56,226	56,226	0
1/3	Th	office	Goodman Realty	56,226	56,230	4
1/3		Goodman Realty	mother's m. mtg.	56,230	56,231	1
1/3		mother's m. mtg.	office	56,231	56,234	3
1/3		office	home	56,234	56,235	0
1/4	F	home	office	56,235	56,235	0
1/4	F	office	W. & Mother's meeting	56,235	236	1
1/4		W. & Mother's meeting	office	236	238	2
1/4		office	lunch	238	238	0
1/4		lunch	office	238	239	1
1/4		supper - your bill	W. & Mother's meeting	239	242	3
1/4		W. & Mother's meeting	office	242	255	13
1/4		office	home	255	255	0
1/4		home & lunch	personal trip	255	263	8
1/5		home	office	263	264	0
1/5		office to show town	W. & Mother's meeting	264	311	47
1/5		office	home	311	312	0
1/7		home	office	312	312	0
1/7		office	Shelburne Post	312	314	2
1/7		Shelburne Post	Shelburne Co. Court H.	314	333	19
1/7		Shelburne Co. Court H.	office	333	353	20
1/7		office	W. & Mother's meeting	353	357	4
1/7		W. & Mother's meeting	court house	357	357	0
1/7		court house	office	357	361	4
1/7		office	W. & Mother's meeting	361	365	4
Total - This page						161
Prior Period						0
Cumulative for						161

Month Ending January 31, 1955

Date	Day of Week	From:	To:	Mileage Reading		Deductible Business Mileage
				Beginning	End	
1/2		Castlewood	office	56,365	56,368	3
1/2		office	home	56,368	368	c
1/2		home to home	personal trip	368	376	c
1/8		home	office	376	377	c
1/8		office	to home for repairs to home for repairs	377	378	1
1/8		to home for repairs	office	378	379	1
1/8		office	lunch	379	380	1
1/8		lunch	office	380	381	1
1/8		office to office	at 1st report - 2nd to home for repairs meeting - office trip	381	406	25
1/8		office	office	406	407	1
1/8		meeting	office	407	408	1
1/8		office	home	408	409	c
1/9		home	office	409	410	c
1/9		office - office	to home for repairs to home for repairs to home for repairs	410	420	c
1/9		office	home	420	431	11
1/9		home to home	office	431	441	10
1/9		office	home	441	442	c
1/9		home to home	personal trip	442	448	0
1/10		home to	office	448	450	c
1/10		office	h.s. office	450	452	2
1/10		h.s. office	office	452	454	2
1/10		office	salary post. od	454	458	2
1/10		salary post.	office	458	460	2
1/10		office to office	office	460	466	2
1/10		office to office	office	466	474	8
1/10		office	home	474	474	c
1/10		home to home	personal trip	474	488	14
1/11		home	office	488	490	c
1/11		office	office	490	493	3
1/11		office to office	office	493	495	2
1/11		office to office	office	495	499	4
1/11		office	home	499	499	c
1/12		home to home	personal	499	517	18
1/13		home	office	517	518	c
Total - This page						84
Prior Period						161
Cumulative for						245

Month Ending January 31, 1985

Date	Day of Week	From:	To:	Mileage Reading		Deductible Business Mileage
				Beginning	End	
1/13		office	old counsel 11/10/84	515	531	13
1/13		old counsel 11/10/84	office	531	549	13
1/13		office	home	544	544	0
1/13		home to home	personal	544	557	0
1/14		home	office	557	558	0
1/14		office	average bush office	558	560	2
1/14		house office	office	560	562	2
1/14		office	home	562	563	0
1/15		home	office	563	563	0
1/15		office	post office	563	565	2
1/15		post office	office	565	567	2
1/15		office	old counsel Rt & happy hall	567	581	14
1/15		old counsel Note	office	581	594	13
1/15		office	happy hall	594	607	13
1/15		happy hall	office	607	620	13
1/15		office	house	620	621	1
1/15		house	office	621	622	1
1/15		office to office	meeting	622	629	7
1/15		office	home	629	630	0
1/15		home	office	630	630	0
1/16		office - office	with counsel Rt & N. Church St.	630	638	8
1/16		office	home 7nd St & L	638	640	2
1/16		home 2nd St & L	1102 N. Church St	640	641	1
1/16		N. Church St	office	641	645	4
1/16		office	home	645	645	0
1/17		home	office	645	646	0
1/17		office - to office	eastwood church	646	666	20
1/17		office - to office	house	646	650	4
1/17		office - office	N. Church St	650	654	4
1/17		office - office	eastwood church	654	675	21
1/17		office - office	home 7nd St & L	675	678	3
1/17		office - office	N. Church St	678	681	3
1/17		office - home	home	681	682	0
1/18		home	office	682	682	0
1/18		office - office	RLS meeting	682	685	3

Total - This page

Print Period:

Cumulative for

1.69

2.45

4.14

Month Ending January 31, 1985

Date	Day of Week	From:	To:	Mileage Reading		Deduct, Total Business Mileage
				Beginning	End	
1/18		Office - Office	Lunch	56,685	56,686	1
1/18		Office - Office	Engineer's meeting	56,686	56,706	20
1/18		Office -	Home	56,706	708	0
1/18		Home - Home	Personal	56,708	56,715	0
1/19		Home - Home	Personal	56,715	56,716	0
1/19		Home - Home	2nd Lions meeting	56,716	725	9
1/20		Home - Home	2nd Lions meeting	56,725	734	9
1/21		Home	Office	734	734	0
1/21		Office - Office	Office - Office - in Home	734	745	11
1/21		Office - Office	Hollen Post Church	745	761	16
1/21		Office - Office	Church - Home	761	769	8
1/21		Office	Home	769	770	0
1/22		Home	Office	770	770	0
1/22		Office - Office	1st Home & 1st W.	770	778	8
1/22		Office	Home	778	779	0
1/23		Home	Office	779	779	0
1/23		C - O	Office - Office - in Home	779	785	16
1/23		C - O	Home meeting	785	802	2
1/23		C - O	Hollen Post Church	802	806	4
1/23		C - O	Home - Office - Home	806	809	3
1/23		Office	Home	809	809	0
1/24		Home	Office	809	810	0
1/24		C - O	Office - 4th Home for	810	815	5
1/24		O - O	Hollen Post Church	815	820	5
1/24		O - O	Hollen Post Church	820	861	41
1/24		O - O	Hollen Post Church	861	864	3
1/24		Office	Home	864	865	0
1/25		Home	Office	865	866	0
1/26		Office - Office	Home - Office	866	892	6
1/26		Office	Home	892	892	0
1/26		Home - Home	Personal	892	898	0
1/27		Home	Office	898	899	0
1/27		Office - Office	Home - Office	899	922	28
1/27		Office - Office	Home - Office	922	952	24
1/28		O - O	Home	952	953	1

Total - This page

From Period

Cumulative for

226

4.14

6.40

5

Month Ending January 31, 1955

Date	Day of Week	From:	To:	Mileage Reading		Deducted for Business Mileage
				Beginning	End	
1/25		office	home	56853	57854	0
1/27		home	office	5854	5854	0
1/29		office - office	office - office	5854	562	8
1/29		o - o	home	562	566	4
1/30		office	home	566	567	1
1/30		home	office	567	562	0
1/30		o - o	office - child in office	567	521	4
1/30		o - o	office - child	521	523	2
1/30		o - o	office - child	523	527	4
1/30		o - o	office - child	527	583	6
1/30		office - home	home	583	587	0
1/31		home	office	587	587	0
1/31		o - o	office - home	587	583	4
1/31		o - o	office - home	583	57021	28
1/31		office	home	57021	57022	0

640
700 MILES - BUSINESS
 1-1-55 - 1/31/55

1/2/55 - 57022
 1/2/55 - 56192
 830 TRIP MILES

BUSINESS = 84.3%

155 POSTINGS FOR JANUARY.

Total - This page

Grand Total

Cumulative for

60
 640
 700

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW YORK

Mr. Chairman, I want to commend you for moving so quickly on these new IRS automobile record keeping requirements and thank you for the opportunity to testify. These regulations place a tremendous paperwork burden on farmers, salesmen, and other small businessmen.

My objection to these regulations derives from my work as Chairman of the Federal Paperwork Commission. As you know, the Commission worked for three years to reduce Federal paperwork and establish a mechanism for the continual elimination of unnecessary regulations and paperwork. The regulations on "adequate contemporaneous records" mark a significant departure from these efforts.

To illustrate the reasons for my concern about these regulations, I would like to share with you a portion of my 1977 letter of transmission from the Final Report of the Paperwork Commission. This passage sheds light on the faulty assumptions which underlie these regulations.

"The theme we heard repeatedly throughout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However, these people can be frustrated by a government which, in their view, does not trust them."

"Many people feel, and the Commission agrees, that a multibillion dollar wall of paperwork has been erected between the government and the people. Countless reporting and recordkeeping requirements and other heavy handed investigation and monitoring schemes have been instituted based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored, and rechecked."

"This situation and this assumption must be reversed if we are to restore efficiency within government and confidence in government by the people and if we are to realize the potential for cooperative attainment of our goals as a Nation. Many of the major conclusions and recommendations of the Commission on Federal Paperwork are aimed at this goal."

These words, and the philosophy they represent, are as true today as they were in 1977. Citizens by and large, have no problem maintaining necessary tax records. The regulations deriving from Section 179(b) are not necessary, they are patently unfair. I urge you to move quickly to restore fairness to the tax code.

STATEMENT OF HON. JERRY HUCKABY, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF LOUISIANA

I would like to today submit a statement for the hearing record urging this Committee to report legislation to repeal the "adequate contemporaneous" record-keeping requirement that was added to section 274(d) of the Internal Revenue Code during consideration of the Deficit Reduction Act of 1984.

There has been a great outpouring of protest from those who have heard of the regulations. In my State of Louisiana alone, I have received phone calls and letters equal to the number I received over the withholding on dividends and interest tax issue, which was eventually repealed. Of greater concern are those who are ignorant of the regulations and will be penalized by the IRS for failure to produce these mountains of paper records.

I feel that this requirement is way out of line. Taxpayers need less paperwork, not more. Certainly, deductions intended to encourage economic activity should not be abused, but this tax compliance measure is going too far. It is a prime example of the cure being worse than the disease. In all likelihood, the change if left intact would result in increased forgery of records, or aggravate the average citizen to the point where he would not take advantage of the deduction to which he was entitled.

I represent a rural congressional district of many farmers, small businessmen and sales people. They are hardworking people who confront enough roadblocks to economic success daily without this additional paperwork burden. They have been telling me that they have suffered a loss of productivity in just the two months this onerous record-keeping requirement has been in effect. It is conservatively estimated that the cost to the consumer nationwide is at least \$7 billion. In my opinion, that is an incredible price to pay for the relatively minuscule gain in revenue estimated at slightly more than \$100 million for the Treasury.

On February 19, 1985, the IRS issued amendments to the proposed regulations on contemporaneous standards. The modifications inject additional complexities for small businesses without clarifying in very definite terms who must maintain a log and who is exempt. I think a reasonable standard, such as existed prior to passage

of the Deficit Reduction Act, should be made to apply across the board, treating taxpayers equally.

A majority of Members of Congress have now cosponsored repeal legislation, including myself. I urge the Committee to act expeditiously on the issue to end the confusion that exists among people trying to comply with regulations which have been altered since their inception, and which face further alteration either through legislation or following the current public comment period.

INDEPENDENT AUTOMOTIVE SERVICE ASSOCIATION,
Washington, DC, March 5, 1985.

Hon. DAN ROSTENKOWSKI,
*Chairman, House Ways and Means Committee, House of Representatives, Longworth
Office Building, Washington, DC.*

DEAR CHAIRMAN ROSTENKOWSKI: The Independent Automotive Service Association (IASA) headquartered in Bedford, Texas is comprised of approximately 5,000 independent and collision repair facilities. I want to express our appreciation to your Committee for holding these timely hearings and for the opportunity to express the views of the automotive repair industry on the issue of tax recordkeeping requirements for business use of motor vehicles.

There has been heated response from the repair industry concerning the regulations as issued and this association has joined with many others in voicing our opposition to the IRS rule which creates a nightmare of paperwork and which interferes with the normal conduct of business.

The recordkeeping rules for deductible motor vehicle expenses promulgated by the Internal Revenue Service impose time consuming requirements which are counter-productive, cumbersome and unnecessary. IASA submitted comments to IRS when the rules were originally proposed, pointing out that there are numerous other means by which business use can be established that would not present such an undue burden. The costs and burdens imposed by the IRS rules are disproportionate to any tax revenue benefit that can conceivably result from implementation of the rules.

The Internal Revenue Service actions to make the rules less onerous resulted in only partial relief to the problem and did not solve it. We are pleased that an attempt has been made to alleviate the onerous recordkeeping but continue to believe that the only answer is repeal of the appropriate sections of the law.

Many in our industry use light trucks and vans given the nature of their businesses and often have people on call 24 hours a day. Still others keep backup vehicles (with or without logos) for use in deliveries, emergencies and overload situations. Given the contemporaneous recordkeeping requirements a paperwork nightmare faces them. If the intent of the law was to halt the abuse of "luxury" cars then the law should address that problem. The IRS solution certainly goes "overboard" in its effort to halt the practices of a few.

Because the law requires "adequate contemporaneous recordkeeping" it is the law that must be changed. The adequate substantiation language of prior law was much more reasonable, and could be complied with reasonably.

IASA urges you to act to repeal these onerous provisions to restore some certainty to the Internal Revenue Code. The confusion and uncertainty which face the business community created by the inclusion of the contemporaneous language must be eliminated. We strongly urge repeal of the adequate contemporaneous recordkeeping requirements in the law.

IASA appreciates the opportunity to submit these comments and requests that they be made a part of the hearing record.

Sincerely,

ALLEN RICHEY, *Executive Director.*

STATEMENT OF THOMAS J. SARDINO, PRESIDENT, INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE

As president of the International Association of Chiefs of Police, I would like to thank Chairman Rostenkowski and the members of the House Committee on Ways and Means for scheduling hearings on the regulations issued by the Internal Revenue Service regarding record-keeping for and taxation of employer-supplied vehicles.

The IACP is a membership organization with more than 15,000 members in 65 nations. It is comprised of chiefs of police and other law enforcement executives. Most of our members are from within the United States and will most certainly be

adversely affected by these unfair, unworkable and ill-advised regulations. Usually I would qualify my statement by stating that the views I am expressing are those of the vast majority of the law enforcement community. In this case, however, based on the number of telephone calls and letters that have been received by the Association, I feel confident in saying that the entire law enforcement community shares my views on this issue.

In an effort to increase revenues by taxing fringe benefits, IRS issued rules detailing how employees will be taxed on employer-supplied take-home vehicles. Although we certainly do not consider the use of take-home police vehicles to be a fringe benefit, we have been advised by IRS that it is their intention to treat police vehicles just like any other.

Two special rules for determining the value of take-home cars have been provided based upon the amount of personal use the officer is permitted to make of the vehicle. In cases where the officer is required to travel to and from work in the patrol car for a noncompensatory business purpose and the officer is not permitted to use the vehicle while off duty, the officer will be charged with income in the amount of \$3 per day. For these officers who are permitted or required to use their vehicles while off duty, IRS has created a table of "annual lease values" (ALV) which correspond to the vehicle's fair market value (FMV). The ALV would be multiplied by the percentage of time the vehicle is used for personal purposes. For example a car with FMV of \$10,500 has an ALV of \$3,100. If 15 percent of the officer's use of the vehicle is personal, he would be charged with income in the amount of \$775. In an attempt to simplify the record-keeping needed to implement this rule, IRS recently stated that in cases where employees, such as police officers, spend most of their duty on their vehicle, the employer can treat 70 percent of the vehicle's use as business use and 30 percent as personal. In the alternative, employees may be asked to keep a contemporaneous log of their personal use of the vehicle.

None of these requirements is acceptable to the public safety agencies or their employees. We are outraged that the use of a public safety vehicle by a public safety officer could be treated as a taxable "fringe benefit" or subject to "contemporaneous record-keeping" requirements. The availability of a police vehicle to "off-duty" officers is essential to the adequate protection of the citizens of the United States. "Take-home" car programs are an effective means of increasing the presence of patrol officers in our communities. To impose tax consequences on police officers under these circumstances would diminish the use of police vehicles by "off-duty" officers, resulting in an enormous and uncalculable loss of enforcement manhours; a drastic increase in time required to respond to an emergency; and great economic cost to the taxpayer.

A good example of the value of take-home car programs occurred in Connecticut two years ago. On June 28, 1983, at 1:30 a.m. the eastbound span of Interstate 95 over the Mianus River in Greenwich, Connecticut, collapsed sending two tractor-trailers and one car into the river below, killing three people. The 35-mile stretch of I-95 that included the bridge is normally patrolled by three patrol cars from Troop G of the Connecticut State Police. As a direct result of having assigned vehicles at home, 25 additional sworn members were at the scene within two hours after the collapse, including emergency services personnel, scuba squads, traffic squads, motorcycles, investigators and commanders.

Eighty-nine thousand six hundred (89,600) vehicles pass over this point daily and the Troop was not equipped to handle the traffic control problems associated with the emergency. During the eleven months the Connecticut State Police were deployed at the bridge, Troopers (as many as 80 a day) were sent from all across the state to assist at the scene. A 24-hour fleet operation system, rather than an assigned fleet system, would surely have broken down under this staffing pressure.

This is but one example of the value of assigned cars. In the history of this Department, as well as many others, the assigned vehicles have proven many times that they promote quick response to any emergency.

It is not possible to separate business use from "personal" use of a police vehicle. In many agencies "on-duty" time begins and ends at the front door of the officer's home. These officers cannot be said to be "commuting" in their vehicles. In some agencies, the route an officer must take to work is assigned by the employer whether or not it is the most direct route. One chief told us that his home is actually two miles from the police station but the route he takes to work is over five miles long. In some cases this may be the only police presence in these communities. Officers are frequently called upon to assist motorists or respond to other situations while traveling to and from work.

Many rural areas are served by a "resident" officer who works from his home. They may go to the station for occasional meetings or submission of required re-

ports. This is true of the majority of state police agencies. In some cases, officers are provided gas cards so as to minimize the necessity to "commute" to the station to obtain fuel for the vehicle.

Officers who are permitted the use of their vehicles while off duty usually must log in to headquarters when they are in their vehicles. Everytime a police officer is in his vehicle he is required to maintain radio contact and respond to calls whether technically on duty or not. The availability of off-duty officers has proven to be as important to the community as the availability of commuting officers.

It must be remembered that virtually all law enforcement officers are subject to call 24 hours a day and must respond to emergencies when called. Take-home car plans insure call back within minimal time frame. As one chief of police explains:

The Sergeant and I reside outside of the boundaries of the Township, a distance not to exceed eight (8) miles, and we take these vehicles to our home on a daily basis. The reason that we do this is that both of us are on call 24 hours a day, seven days a week. At any time that there is an emergency or the need of any other kind for either (or both) ranking officer(s) to respond, we respond. We utilize the two-way radios to learn further of the situation, analyze, and direct operations as needed.

Because we both are considered management-level personnel, at no time do either of us receive any remuneration, financial or otherwise, when we get called away from our personal lives. We receive an annual salary regardless of how many hours we work and regardless of how many times we get called in to handle a situation.

Even on our regularly scheduled "off" days, we periodically come to the office and to the municipality to check on things. Further, we find that, quite frequently, instead of coming directly to the office, we make some rounds of the bailiwick, checking for conditions that need police action of some kind.

We believe that we have a situation that mandates that we be available for any and all emergencies, and from a logistical standpoint, the office is situated almost exactly in the middle of our bailiwick, and if we had to respond from our private homes when called, without a radio equipped police vehicle, on many occasions we would drive right by an emergency situation requiring immediate action, and not be aware of the situation.

[Attachment]

CHIEF ROBERT P. BITTNER, WEST WHITELAND TOWNSHIP, EXTON, PA

Federal law enforcement agencies are also affected by these regulations. Many federal agents are routinely called upon to respond under exigent circumstances on a 24-hour basis. Consequently, the ability to operate and maintain a government vehicle on a 24-hour basis is a condition of employment for many federal agents. This immediate access to a government vehicle facilitates performance of service to the government.

In essence, the Internal Revenue Service is requiring police officers to pay for the "privilege" of providing service to our citizens over and above the officers long hours of daily activity without additional compensation. It is our citizens who are the prime beneficiaries of take-home car programs, not the police officers. It is our citizens who will suffer if the programs are curtailed as a result of these ill-advised and unfair regulations. The presence of "off-duty" police in marked police vehicles increases with minimal costs, the visibility of our police officers within our community and increases the number of vehicles on patrol. Few if any agencies can afford to achieve equal police presence with increases in personnel. Around-the-clock availability of all officers assures our citizens that protection is close at hand while deterring criminal activity.

Since the IRS issued its regulations, we have contacted our members and asked that they inform us of how their jurisdictions will be affected. The information we have received is impressive.

The Maryland State Police reported that in the last year, over 40,000 hours of additional police patrol were provided by off-duty officers. Off-duty troopers handled more than 6,200 incidents, 85 percent of which were handled without assistance.

Based on a six-year study, the Louisiana State Police calculates that 273,750 man hours of free patrol time per year are realized from the off-duty availability of patrol cars. This figure includes commuting time as well as off-duty assistance. In 1984, 28,539 incidents were handled by Louisiana State Troopers ranging from issuance of traffic citations to assisting stranded motorists, to assisting other officers in arresting criminal suspects.

There are equally strong reasons why undercover officers who work in unmarked vehicles should be excluded from the regulations. In many undercover assignments, the necessity to drive from the officer's home to headquarters to pick up an under-

cover car might jeopardize the officer's safety. The time lost in doing this may cause the officer to be discovered, or lose critical evidence.

The withholding of social security and income taxes will create an administrative nightmare for federal, state, county, and local governments. There are numerous additional record-keeping requirements for governmental entities as a result of these regulations. The increased cost to the taxpayer for compliance will assuredly outweigh any increase in revenues received by the IRS.

The contemporaneous record-keeping requirement is unworkable. Imagine if you will, an officer hesitating to take down mileage (even if he can determine which part is personal) while theoretically "off-duty" and responding to an emergency. This ludicrous scenario would occur if officers must adhere to the contemporaneous record-keeping requirements.

Further, many agencies that have take-home plans simply do not have adequate secure storage facilities available to store the vehicles if officers declined to take them to the officer's home. Maintenance costs may very well escalate. This may result for the vehicle being assigned to more than one tour of duty or the reduction in pride by individual officers who may be less likely to maintain a vehicle that is not provided solely to them.

If I may digress for just a moment and pose an additional concern; if these regulations are permitted to remain in force, and if an officer is permitted or required to operate a police vehicle while "off-duty," how does one calculate the "fair market value" of the vehicle? Is it based on the cost of the vehicle as equipped for police service—that is with a radio, light bar, siren, prisoner-restraint cage, gun rack, spotlights and markings? Or is the "fair market value" based on the value of the car as it leaves the manufacturer? If the latter is true, it does not take into consideration those "options" that are required for police service, but differentiate a police vehicle from other vehicles. These "options" include heavy-duty suspension, brakes, certified speedometers, oversize wheels and tires, larger engines and cooling systems, and dual exhaust systems.

Therefore, it would certainly appear to be inequitable to tax an individual for the increased "fair market value" of a vehicle that is a working condition of employment as a police officer.

Consider also that some officers are assigned vehicles that may be six or seven years old while others are assigned brand new vehicles. The difference in the purchase price of these vehicles varies by thousands of dollars. The disparity in fair market value is greater. Are we to impose a greater tax liability on an officer who by the luck of the draw, or his patrol needs has been assigned a newer vehicle? And what about the undercover officer? Is he to be charged with the fair market value of a Cadillac Eldorado because it is needed for his assignment?

As an appendix to my own statement, I have attached several pages of quotations excerpted from the many, many letters we have received from our members. These statements are arranged according to the various concerns I have posed. After reading the comments of the chief law enforcement executives of this country, I am certain that you will agree that the IRS regulations are inequitable and unworkable when applied to public safety agencies.

It is our understanding that the drafters of the Tax Reform Act of 1984 did not intend law enforcement vehicles to be affected. They believed that it was clear that "take-home" police cars would come within the "working condition fringe benefit" exclusion. As we now know, this was not so clear to IRS.

On behalf of the members of the International Association of Chiefs of Police and the citizenry at large, I urge Congress to correct this misunderstanding and prevent enforcement of both sets of regulations as they apply to police, fire, and emergency vehicles.

[Attachment]

COMMENTS OF LAW ENFORCEMENT EXECUTIVES

EMERGENCY RESPONSE

The combined chiefs of the State of Illinois are gravely concerned over two particular issues: 1) It is felt that the imposition of this bureaucratic pronouncement will cause a public safety hazard. Police administrators and tactical and field personnel are often assigned vehicles so that a rapid response to unusual emergency circumstances can be provided. Staff officer and field personnel will now be reluctant to take home vehicles because of the penalty which is being placed upon them due to their dedicated service; 2) police officers are often assigned vehicles to conduct undercover operations and for field inspection purposes. Vice squads, tactical

units and SWAT units are all examples of personnel who are assigned cars for very specific purposes. Ranking officers, staff personnel and Chiefs of Police are required to be in the field to inspect and direct operations.

The impact of this ill-thought interpretation of the law will have dramatic consequences on safety and will penalize many conscientious, dedicated professional police officers throughout the United States.

WILLIAM P. NELSON,
President, Illinois Association of Chiefs of Police.

Police officers are on call 24 hours a day, and cannot be expected to be called out in their personal vehicles to a crime or emergency scene. If they were, they would be required to stock the necessary emergency gear to meet those needs. Naturally, the funds for this would come out of their own pockets. As I understand current policy, those costs would be deductible. That simply would not make sense.

LOUIS A. BENCARDINO,
Chief of Police, Seward Police Department, Alaska.

Marshall, Missouri, is a small department of 22 full-time and 20 reserve officers. Some of our officers are currently required to take police cars home. They are subject to being called out at all hours of the day and night, when officially off duty in order to respond directly and immediately to crime scenes or to assist in handling an emergency. It would hamper our crime investigation and scene processing capabilities a great deal if we were restricted to leaving all our cars at the police station.

JAMES B. SIMMERMAN,
Chief of Police, Marshall, MO.

Depending on the interpretation of "take-home" vehicles, those regulations could have a profound impact upon the South Dakota Highway Patrol.

Because we are a rural state, with a small population scattered throughout a large area, our organization has found it necessary to selectively place its manpower. Approximately 70 percent of the patrol's total manpower is placed in either one-, two- or three-man stations.

In most cases, the work areas of these smaller duty stations are such that the troopers assigned are responsible for calls 24 hours a day. Troopers in the multi-man stations are responsible for an assigned shift, but also are required to be able to respond to emergency calls.

This regulation would severely hinder our function of response to emergency situations. In many of our rural areas, our troopers are the only law enforcement for a large geographical area.

JERRY BAUM,
Director, South Dakota Highway Patrol.

In a decentralized organization, such as the Ohio State Highway Patrol, the patrol car is the vital link between an emergency call for assistance and a timely life-saving response. Our patrol officers are available for emergency calls 24 hours a day.

Some staff officers in our organization are also issued state vehicles with take-home responsibilities. These cars are not assigned so the individual can have "free transportation," but so that we can order them to respond to statewide emergencies directly from their homes and have with them the proper equipment to carryout their responsibilities. This is a responsibility that the Ohio State Patrol has to their citizens.

Col. JACK WALSH,
Superintendent, State Highway Patrol, Ohio.

If officers responding to a police emergency came from their homes to the police department to pick up their police vehicles, valuable time would be lost, certain evidence would not be gathered, and crimes that would have been solved will not be solved.

ROGER E. HALBERT,
Chief of Police, Jacksonville, NC.

Every sworn officer is, by his profession, under obligation to protect and defend the community both on and off duty. It is to our advantage to be able to send an officer home in a patrol car so he can respond quickly and effectively when he/she is called upon.

WALTER LEMAN MESSLEY,
Chief of Police, Burley, ID.

As a result of this ruling, police vehicles will be parked at the station. The practice impact will be much slower response to crime scenes and delays for senior supervisors to problem situations. Additionally, our resource people will be less likely to provide the same level of service to citizens.

In short, the minor revenue by the government will be offset by a reduced efficiency to this community. In fact, revenue will not increase at all for the vehicles will be parked and we will lose the flexibility of our people and Boise will be double loser.

JAMES E. MONTGOMERY,
Chief of Police, Boise, ID.

Montana officers are scheduled for 24-hour coverage. We have no "graveyard" shifts any place within the state and must call officers "out" from their residences to investigate traffic accidents that occur late at night and to respond to other emergencies.

Col. R.W. LONDON,
Chief, Montana Highway Patrol.

Emergency response vehicles are not a benefit, but a duty. The individuals who remain on call for public safety should not be punished by adding nonexistent taxable income to their salaries when no personal benefit is derived.

Col. JOHN N. DEMPSEY,
Chief, Colorado State Patrol.

Currently, in my own department, my detectives and myself are required by the Township Committee to be available with a municipal vehicle to respond to numerous specified calls on a 24-hour basis. There are instances wherein the fire chief and members of our first aid squad fall into the same category. There is no time wherein we are using the township-assigned vehicles that we are considered off duty or on our own personal time. We must communicate with headquarters our location whenever we are using the municipal vehicle.

HOWARD L. RUNYON, Sr.,
*Immediate Past President, IACP,
Passaic Township Police Department, Stirling, NJ.*

ASSISTANCE TO THE PUBLIC

Operation of an agency vehicle in an off-duty capacity is more an expected extension of a trooper's employment. Maryland troopers are on 24-hour call and are expected to respond immediately when called. Installation commanders, supervisors, tactical squads, technicians and others are often called out from their homes. Our operating procedures enforce this philosophy. When a vehicle is used off duty, the trooper is obligated to carry his agency-issue weapon and dress appropriately.

In 1984, off duty use produced an additional 40,205 hours of police patrol in Maryland. Replacement of that service would cost over \$650,000 in overtime costs or 23 new positions costing over \$1,000,000. Over 6,200 incidents were handled off duty, and 85 percent of these incidents were handled by the off-duty trooper without the need of dispatching an on-duty trooper. Off duty use miles represent only 3.3 percent of the agency's total annual fleet miles.

Col. W.T. TRAVERS,
Superintendent, Maryland State Police.

The State of West Virginia is a very rural state and as such, many of our police officers, i.e., city, county and state, are required by their department to take vehicles home so that they can respond to calls for assistance while off duty. Also, most of our cities are small and they require their detectives to take vehicles home so that they can be called to render investigative assistance while off duty.

If police officers in the State of West Virginia would have to commute by personal vehicle to and from an office or detachment in order to pick up a vehicle in response to a call for assistance, the response time to the requesting citizen would be more than doubled due to our mountainous terrain and the rural setting of this state.

Chief GARY D. DEEM,
Vienna, WV, and President, West Virginia Chiefs of Police Association.

The large majority of our vehicles are fully marked "Alabama State Trooper" cars complete with decals, blue lights, sirens, two-way radios, and other emergency equipment that is carried in the trunk. A trooper reports to duty in full uniform and is immediately on duty at the time he leaves the driveway. There is no personal

use of this vehicle. The trooper is required to take action on any law violations, assist stranded motorists, and investigate or assist at any accident scene that he might encounter while traveling.

Col. BYRON PRESCOTT,
Director, Alabama Department of Public Safety.

INCREASE VISIBILITY

For some years we have been analyzing the possibility of assigning marked police vehicles to our individual uniformed officers. Our studies indicate that this will provide a 60 percent increase in deterrent visibility and provide the department with an adequate vehicle pool in the event of a natural or man-made disaster.

KATER WILLIAMS,
Chief of Police, Dothan, AL.

Athens has the "support car" program and the potential impact of this ruling upon this city will not aid crime prevention efforts. The "support car" program allows uniformed officers to take their police cars home and in fact use them for "personal use," i.e., going to the supermarket, etc. The obvious theory behind this is the deterrence of crime based upon high visibility.

THEODORE S. JONES,
Chief of Police, Athens, OH.

Many local law enforcement agencies throughout our state and, indeed, throughout the entire United States, have adopted—after careful study—the practice of issuing individual police cars to each state trooper, sheriff's deputy, or police officer. They have done this for a number of reasons: to increase the visible presence of police in the community and on the highways as a deterrent to crime; to enable officers to respond directly and rapidly to emergencies from their homes when needed; to save tax dollars by insuring better maintenance and care for public fleets; and to improve availability and visibility of police in residential areas, etc.

TERRENCE MANGAN,
*Chief of Police, Bellingham, WA, and
President, Washington Association of Sheriff's & Police Chiefs.*

Because of economic realities, police administrators must effectively manage the limited resources available to them. We in North Charleston have determined that our citizens benefit tremendously when we assign vehicles to police officers and allow them to drive them home. The presence of off-duty police in marked police vehicles increases, with limited cost, the visibility of our police officers. This increases the sense of security and safety in the minds of our citizens while at the same time, increasing the fear in prospective criminals' minds that they will be caught. While off duty and in the police vehicles, our officers are required to report on the air and to respond to emergency calls which occur in close proximity.

I sincerely feel that the recent IRS regulations relating to take-home police vehicles will have a significantly adverse effect on our ability to provide the most effective and efficient police service for our citizens.

J. AL CANNON, Jr.,
Chief of Police, North Charleston, SC.

The feeling of police omnipresence instilled in the public by police vehicle take-home programs contributes significantly toward the prevention of many criminal activities and traffic violations. Needless to say, prevention of wrongdoing is a more desirable course of action than response to an activity which has already endangered persons or property, and prevention in itself is an immeasurable commodity.

Members who occupy positions to which a vehicle is assigned and field members who are now taking state police vehicles home between shifts augment the patrol function during the period of travel to and from their work location. During these travel periods, members actually become extra patrol officers who are available to assist motorists or respond to accidents or crimes as needed. The proposed IRS rule would eliminate this particular program and any other similar prevention or response program devised by law enforcement agencies and designed to utilize police vehicles outside of a regular work schedule. This would result in a substantial decrease in the quantity and quality of police services available to the citizens of Pennsylvania.

Lt. Col. N.G. DELLARCIPRETE,
Acting Commissioner, Pennsylvania State Police.

State troopers in Delaware, who use police vehicles for commuting, are expected to take any and all necessary police action which in a commuting status. Not only does this policy result in enhanced enforcement, but it also permits increased realization of the intangible preventive benefits derived from police visibility in communities and on the state's highways. To discourage such vehicle usage through the taxing mechanism is seen as inequitable to the officer and counterproductive to public safety.

Col. DANIEL L. SIMPSON,
Superintendent, Division of State Police, Dover, DE.

CONFIDENTIAL INVESTIGATIONS

It is much preferable in terms of integrity of investigations, safety of the vehicle and safety of the member, for confidential vehicles to be stored at the residence of the member rather than at a station or other storage location. If members assigned to covert investigations were required to pick up a vehicle at a storage location daily, the best that could be hoped for would be a compromised investigation or damaged vehicle while the worst that may happen could be some physical harm or death to the officer.

In some cases, members are supplied with fictitious identities and must live that role 24 hours a day for an indefinite period of time. The vehicle is an integral part of this role and any attempt at record-keeping for personal/official use would be very difficult at best.

Lt. Col. N.G. DELLARCIPRETE,
Acting Commissioner, Pennsylvania State Police.

AGENCY STORAGE PROBLEMS

In many areas of the state, troopers are assigned to counties in which there is no physical patrol facility. Therefore, they are required to drive the vehicle home to provide security for the vehicle itself.

Col. BOBBY R. BURKETT,
Director, Florida Highway Patrol.

In a number of our ATF offices, secure space is not available to store bureau vehicles during nonduty hours and the cost to the government of such facilities would far exceed any benefits derived from the proposed taxes.

STEPHEN E. HIGGINS,
Director, Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms.

No enforcement units are stored at "offices" and, therefore, the additional burden to provide storage for law enforcement units should they not be taken home by enforcement personnel would pose a tremendous problem. All vehicles are especially equipped with unique law enforcement equipment which would pose a security problem if they had to be stored at a public facility.

JAMES P. ADAMS,
Director, Texas Department of Public Safety.

All our Montana Highway Patrol officers are issued automobiles for the express purpose of being available 24 hours per day. They are required to provide storage, security and electricity for those vehicles. It is necessary to "plug in" the engine heaters during our Montana winters in order to start the cars. All this is done at the officer's expense and on his own time.

Col. R. W. LANDON,
Montana Highway Patrol.

STATEMENT OF STANLEY HAMILTON, EXECUTIVE DIRECTOR, INTERSTATE CARRIERS CONFERENCE

This statement is submitted for the record in the Committee's hearing on vehicle recordkeeping requirements by the Interstate Carriers Conference, an affiliate of the American Trucking Associations representing some 700 common and contract trucking companies throughout the United States. These carriers vary widely, about 30 percent having revenues of less than \$1 million and 20 percent having more than \$10 million. No other group of carriers make more extensive use of the services of owner-operators, individuals owning their own trucks.

The Interstate Carriers Conference strongly urges repeal of the contemporaneous recordkeeping requirement in Section 274 of the Internal Revenue Code, which, as

reduced to proposed regulations by the Internal Revenue Service, is a regulatory paperwork nightmare for trucking.

In stating there is no reason why heavy trucks should be subject to the record-keeping requirements at all, we fully endorse the statement presented to your Committee by the chairman of the American Trucking Associations.

Heavy trucks should not be covered by the proposed recordkeeping regulations for two basic reasons—the likelihood of tax evasion is infinitesimal and the proposed IRS regulations are so complex and confusing that truck operators would run a high risk of adverse tax consequences if the regulations are not painstakingly complied with.

The probability of tax evasion is miniscule because it simply is not good business to use a \$70,000 truck for anything other than its sole purpose—to haul freight.

As far as employees driving for trucking companies are concerned, the disincentives to permitting them to commute or run errands in company trucks are obvious—when the employee is using the vehicle the liability attaches to the employers.

With respect to the thousands of individual owner-operators, does the IRS really believe shopping or vacation trips are commonplace with hard-to-park 20,000-pound vehicles that get an average of five miles to the gallon of diesel (currently costing 126.7 cents¹ per gallon)? To the contrary, the owner-operator is well aware that any non-business mileage will come out of his or her pocket in accelerated maintenance and decreased trade-in value.

The proposed IRS regulations show a dismaying unawareness of how owner-operators conduct their business. The regulations would appear to consider that business use of a truck would begin and end only at the business premises of the employer. The reality is that the actual place of business of almost all owner-operators is their home, and the business use of the truck commences when the owner-operator leaves his office at home to pick up a load. There is no commuting, as commonly defined. Many owner-operators, in fact, perform a cycle of pickups and deliveries around the country for weeks at a time, seldom reporting in at the employer's place of business.

It should be obvious that the potential for personal use of heavy trucks is so minimal there is no justification for the burdensome recordkeeping requirements contained in the proposed regulations. Yet, if an owner-operator did not keep detailed mileage records, the regulations would allow that individual to treat only 80 percent of the year's total mileage as business, with the other 20 percent lost in tax benefits on the vehicle.

As for the second point—the adverse tax consequences of not fully complying with the pages and pages of the proposed regulations—the only foolproof way of demonstrating that no personal use of a vehicle has occurred is by maintaining a current log showing that all use was business. In the employer-employee situation, the regulations provide that the employer satisfies its requirement to maintain records by relying on the records submitted by the employee unless the employer knows or has reason to know those records are inaccurate. But in the case of owner-operators, the regulations treat them as sole proprietors, that is, as both employer and employee.

For the reasons stated, the Interstate Carriers Conference sees no justification from a tax liability standpoint for trucks to be included in the regulations, which, as written, will unnecessarily subject thousands of individual truckers and employers to possible adverse tax consequences plus additional costs of doing business.

STATEMENT OF THE IOWA PUBLIC SERVICE CO.

Iowa Public Service Company (IPS) appreciates the opportunity to present this statement regarding the Amended Proposed and Temporary Treasury Regulations (T.D. 8009) relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

IPS is an investor-owned utility engaged in the business of generating, transmitting, distributing, and selling electric energy and distributing and selling natural gas in various communities and surrounding areas in the states of Iowa, South Dakota, and Nebraska. IPS provides service to about 125,000 gas customers and 125,000 electric customers in the three states.

IPS uses a large fleet of vehicles in providing service to customers. As originally issued, the regulations would have required burdensome recordkeeping for nearly one hundred vehicles that are used exclusively for business purposes. The amended regulations eliminate the requirement to keep needless records and, to this extent,

¹ Interstate Commerce Commission weekly diesel fuel price survey for the week of Feb. 18, 1985, which measures nationwide average, full-service cash sales, including taxes.

we believe they are more in keeping with the intent of Congress. Further modifications, however, will result in regulations that are fairer to utilities and other taxpayers who use vehicles predominately for business purposes.

Our principal concern with the amended regulations is the requirement to impute income to those employees who have "on-call" emergency assignments. IPS requires certain employees to be "on-call" twenty-four hours a day, seven days a week to respond to emergency situations such as power outages. These employees are required, as a condition of employment, to take company vehicles home in order to provide the fastest possible response to emergencies that occur during other than normal working hours.

We believe the regulations should expressly provide that employees who are required to take company vehicles home for the purpose of responding to emergencies, are not engaged in commuting and no income should be imputed to them. We urge that the regulations be further amended to reflect this situation.

If the regulations are not amended to provide relief for those employees on emergency call, our concern is with computation of income based on the fair market value of the vehicle. Because of the need to respond to emergency assignments in adverse weather conditions some employees are required to drive a more expensive specially designed or four-wheel drive vehicle. The employee should not be penalized for this requirement. The special, more expensive vehicle provides benefit only for the employer not the employee. We believe the regulations should be amended to permit an alternate computation of income based on the fair market value of the least expensive fleet vehicle rather than the fair market value of the more expensive vehicle assigned to the employee.

Finally, we favor modification of the regulations to permit those employees who live only a few blocks from the employers business site to be excluded from income imputation. The \$3 per day method discriminates against those employees having such a short commuting distance. We believe these employees should be exempted in the same manner as those employees having no personal use of vehicles other than de minimus personal use.

Thank you for the opportunity to present our views on these important regulations.

JACKSON WELDING SUPPLY Co.,
Pittsburgh, PA., February 21, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.

DEAR MR. DOWLEY: This letter is my statement to be included in the printed record of the scheduled March 5 hearing on the recordkeeping requirements for business auto use:

My company is in the industrial supply business in Western Pennsylvania. We have six autos and one light truck which would fall under the proposed Treasury Department regulation. This regulation causes us concern in two areas. The first area of concern is the extremely burdensome way we have to keep the actual record. Our people are spending time computing data for the IRS that could much better be spent on doing our business. As you know the recent demise of the steel industry has made business very difficult in this geographic area. We very strongly object to anything which causes our productivity to be going in a negative direction. If we spend only five minutes per day on this record our seven people will lose 2.9 hours per week or almost 19 man days of work per year.

My second concern is the actual record itself. To be accurate the record will have to be kept in the auto. This means there will be seven books floating around which show every customer by company name and each contact in that company. This would be of great interest to a competitor. I realize security would be my problem but this is a problem we do not want.

There must be a better way for the IRS to charge tax on business autos. We do not offer a solution other than to repeal the regulation and start over with perhaps a flat tax per business auto.

We support the need of our government to gather tax monies and we recognize that you want to do this job as fairly as possible but this regulation is just too burdensome. Please repeal it.

Very truly yours,

JOSEPH L. MAZZIOTTI, Jr.,
Vice President.

JONES, DAY, REAVIS & POGUE,
Washington, DC, March 7, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, Longworth Office Building, Washington, DC.

DEAR MR. DOWLEY: We hereby submit this written statement for the record in connection with the March 5 hearings of the Ways and Means Committee. This statement is submitted by the multi-city law firm of Jones, Day, Reavis & Pogue, on behalf of a broad coalition which includes some of the largest publicly-traded corporations in the world, smaller, privately-held corporations, and large public-sector organizations.

As the Committee knows, the Treasury recently issued two controversial sets of regulations concerning automobiles, aircraft, and certain other property. One set governs depreciation deductions where there is some personal use of these things, and the other set governs the income and withholding side of the same issue. The set governing depreciation deductions, particularly its automobile recordkeeping rules, has created a great deal of interest and caused several Members to sponsor corrective legislation. The IRS has also responded, albeit not that helpfully, in a series of press releases and revisions to the regulations.

We believe this is just the tip of the iceberg, however, because the other set—that governing income and withholding—imposes just as many burdens, and is just as complex and harsh. For example, it does no good to reduce recordkeeping burdens on the depreciation side if, for income and withholding purposes, employers must still instruct their employees to keep extensive records of their personal and business use of an automobile, and then must gather up those records every quarter and review them employee-by-employee for purposes of income imputation, withholding, and payroll taxes. This chore cannot be “softwared” or otherwise automated. The personal and business use records of each employee will be different; in fact, the records of any given employee will be different quarter by quarter. We respectfully suggest that this chore, undertaken by every salesman, delivery person, rancher, realtor, police officer, state legislator, and so on across the nation—and their employers—is an inefficient allocation of the nation’s resources.

The mention of police officers and state legislators brings up another issue raised by the recordkeeping rules—they are particularly unfair in the case of the public sector. The public sector does not claim depreciation deductions or investment credits, and its purchase of police cars, ambulances, snow removal equipment, and so on is not tax-motivated. One could logically infer from this that the public sector would not be subject to the recordkeeping rules, most of which are set forth in the regulations governing depreciation deductions. But the revisions to the regulations announced by the Treasury and IRS in February import the full set of recordkeeping rules into the income imputation and withholding regulations, requiring the public sector to comply with all the recordkeeping burdens already criticized so loudly—and accurately—by the public sector.

Another example will illustrate the complexities and harshness typical of the regulations. Before a taxpayer can determine the proper tax consequences of a flight on a business aircraft, he must determine the purpose of the flight by the plane, the purposes of the flight by the employees on the plane, the extent to which these purposes coincide, and the rank of the employees. He must then match his findings to the “exclusively” business, “primarily” business, “some” business, and “no” business tests of the regulations. If he has made it through this maze, he will be infuriated to find that he may be taxed on his use of the plane at three times full first class fares, or, incredibly, full charter rates. Even worse, if he has misapplied any of these tests, even in good faith, he will always be taxed at the full charter rate. This last rule is particularly harsh and punitive, and invites disrespect for the system.

We believe these regulations are contrary to the fairness and simplification which are the hallmarks of all current tax policy discussions. We also believe they do the Committee and Congress a disservice, because they cannot be what the Committee and Congress intended when they acted on this matter last year. We refuse to believe, for example, that the Committee and Congress intended the Treasury to publish lengthy, complicated, and confusing rules imposing tremendous administrative costs and threatening ordinary taxpayers with harsh valuations.

What this means is that the Committee must address the recordkeeping burdens and harsh and confusing rules of both sets of regulations if the current controversy is to end and if taxpayers are to have any hope of complying with the regulations. The Committee could sponsor specific legislation providing for reduced recordkeeping, clearer guidelines, and fairer values. It also could work with the Treasury and

IRS towards the prompt issuance of revised regulations embodying these objectives. Finally, it could consider a moratorium until fairer regulations are proposed.

As to specific legislation, we would note first that many Members of Congress have sponsored bills addressing the problems caused by the regulations. For example, there are bills on automobile recordkeeping, the parents of airline employees, public sector vehicles, empty seat travel, and hotels, airlines, and the line of business rules. We respectfully suggest, however, that piecemeal action of this sort is not the best approach. We suggest that Congress instead restate in one overall bill what it intended last year—that fringe benefits should be taxed, but under clear rules and fair values that would invite compliance by the public and insure administrability by the IRS.

We believe a bill of the following sort would accomplish this, and garner overwhelming support: First, it should provide for a return to previous recordkeeping standards, incorporating the bill to the same effect already introduced by several Members of the Committee.

Second, it should make it clear that there is no tax due on use of a public sector vehicle, where such use is required by the employer and where the vehicle is involved in public safety, public service, or the security of a public official. The IRS has made a move in this direction, proposing a three dollar a day rule in such a case. But do we really want to force every state, county, and municipality to set up the system necessary to monitor, withhold, and otherwise administer the three dollar rule? How many police or state legislators do we think there are who abuse the system? To the extent they exist, isn't it better to insure compliance through audit, instead of requiring the entire public sector to take on new administrative burdens?

Third, with respect to private sector vehicles, it should provide deemed levels of personal use as a safe harbor, not requiring recordkeeping, where it is clear most use will be for business purposes—for example, where farm vehicles or a travelling salesman are involved. The IRS has again begrudgingly taken a step in this direction, but has set its personal use safe harbors too high—for example, 20 percent of a truck's use is deemed personal.

Finally, it should eliminate the subjective and confusing rules adopted by the IRS in the general aviation area, and should substitute safe harbors based on readily determinable facts, such as whether the person flying is an ordinary employee or an executive, and the type of plane involved. It is also imperative that it value flights on the basis of commercial fares otherwise available.

If instead of specific legislation the Committee believes it appropriate to address this issue by working with Treasury and the IRS, we have attached for your convenience as Exhibit A a submission we made earlier to Treasury and the IRS suggesting rules we believe are clear and fair. (We ask that Exhibit A be printed in the record as part of our written statement.) The only change in analysis that has developed since we made this submission concerns the valuation of business aircraft, where owner-pilots and others who use smaller planes believe reduced valuations are appropriate in their case.

Finally, if or when a moratorium is raised as a possible solution, please consider Exhibit B hereto. (We ask that Exhibit B be printed in the record as part of our written statement.)

Thank you for your consideration.

Very truly yours,

RAYMOND J. WIACEK.

Enclosures.

[Exhibit A]

REFORM OF THE PROPOSED SECTION 61 AND 132 FRINGE BENEFIT REGULATIONS

Taxpayers require clear and administrable rules, reduced paperwork burdens, and fairer values. Harsh and ambiguous rules written from the perspective of compliance offer no guidance to the great majority of fair and reasonable taxpayers, and are perceived by the majority as unfair and punitive. An IRS news release announcing revisions to the proposed section 61 and 132 regulations—and containing clear and administrable rules, reduced burdens, and fairer values—should be issued promptly.

We recommend that the news release contain the following:

1. Automobiles.—The proposed regulations contain no safe harbors except for a very narrow commuting rule. Safe harbors to reduce the recordkeeping burden on employers and employees, and to clarify the treatment of government cars, are necessary.

a. Where business use exceeds 50%, employers should be permitted to impute income in reliance on safe harbors of the sort announced in the section 274/280F news release of January 26—that is, they should be able to deem personal use to be a fixed percentage. This will permit employees to avoid keeping burdensome records, and permit employers to avoid quarterly collection and review of such records. It is also recommended that the set percentage be reduced to 10% for special vehicle and 20 % for cars. Where business use is less than 50%, an employer could not impute income in reliance on such safe harbors; however, to reduce withholding burdens, employers should be allowed to base withholding throughout the year on a deemed percentage of personal use—say, 75% or actual personal use from the preceding year, whichever is less, with a final, make-up amount withheld at year end if needed.

b. Government cars regularly used in official business, such as those of police and waterwork departments, should require no imputation of income. Police cars are prominently marked, and many communities require their use by officers (but do not permit use by family members) even for personal business, because the visibility and “show of force” is accepted by most experts as a major contributor to public safety. Employees of waterwork and similar department are on call 24 hours a day. Again, personal use is limited to the employee, and invariably restricted to commuting. A threshold, such as 50% business use, may be incorporated in this rule, or the IRS may simply accept that the business use of such cars always exceeds 50%.

2. Aircraft.—The so-called “safe harbors” in the proposed regulations must be replaced by true safe harbors.

a. Flights by key employees (other than non-taxable working condition fringes) should be valued at the equivalent of 200% of commercial first class. (Use of SIFL multiples to determine commercial fare equivalents is acceptable.)

b. Flights by non-key employees (other than non-taxable working condition fringes) should be valued at 50% of commercial coach, just as is travel by the parents of airline employees. Hitchhiking by a non-employee, on a flight which constitutes a working condition fringe as to the employee involved, also should be valued at coach.

c. The news release also should announce that the definitions of key and non-key employees will be made clear and administrable.

3. Security.—The lack of guidance in the security area should be replaced by clear and simple rules.

a. The provision of a car and driver because of bona fide security concerns should not result in the imputation of income, in keeping with the very clear legislative history on this point.

b. Flights by key employees for whom the employer has bona fide security concerns and reasonable and consistent rules for aircraft use should be valued at 100% of first class.

c. The news release also should announce that factors to be considered in determining whether bona fide security concerns exist will be included in the regulations. It should be presumed that bona fide security concerns exist in connection with elected and appointed public officials, such as governors or cabinet secretaries, and similarly situated public figures.

4. Procedure.—The “one bite at the apple” rules in the proposed regulations are unauthorized and harsh. Good faith reliance on any one portion of the regulations, even if ultimately determined to be incorrect, does not require punitive treatment.

[Exhibit B]

A FRINGE BENEFIT MORATORIUM IS NEEDED AGAIN

In Code section 132, added in 1984 by DEFRA, Congress addressed the taxation of fringe benefits. This section provides that certain traditional fringes, such as turkeys at Christmas and discounts for department store workers, are not taxable. As of January 1, 1985, however, everything else is taxable at fair market value. Everything. More precisely, employees have to treat the value of everything else as income, and employers have to withhold on this income and pay their share of payroll taxes on it.

No one was ready for this. It is certain, for example, that the Department of Defense was not ready—not ready to record, or value, or withhold on, the free “space available” flights provided worldwide to military and retired military personnel on military aircraft. One informal estimate from within the Pentagon places the cost of the system necessary to comply at several times the annual budget of the IRS. Needless to say, this particular expense is not part of the Defense budget now being debated. Nor is the cost of the extra payroll taxes involved.

States, counties, and municipalities also were caught unaware. For example, many such public sector organizations require police officers and other public safety officials to drive their vehicles home at the end of their shift. This kept the vehicles close at hand to insure a prompt response to emergencies. It also keeps the vehicles visible throughout the community. Most experts think this "show of force" is an important factor in deterring crime. No one really focused on the fact that such employees realize a "fringe benefit" from such policies, because their "commuting" is "free." So, as of January 1, 1985, states, counties, and municipalities are expected to value this commuting, impute it to their employees, withhold on it, and pay payroll taxes on it. Most public sector budgets are set for 1985. Most do not include line items for administrative costs or extra payroll taxes attributable to the new fringe benefit rules.

Congress also was not fully aware of the implications of the new fringe benefit rules. It certainly did not consider that withholding on non-cash "income" was a mandatory subject of bargaining, which could properly lead to the filing of grievances, unless labor contracts are renegotiated. Nor did it consider that definitions, thresholds, and payments in many pension plans are tied to "income," "wages," or similar terminology, all of which could be affected by the new fringe benefit rules. It could not have known that the Treasury would place much higher values on certain "fringes"—such as flights on private aircraft—than the Federal Election Commission, which will lead to some interesting problems. It also appears it was surprised by the outcry over the recordkeeping burdens imposed by the new law, particularly as to automobiles. While most attention has focused on the recordkeeping burdens of sections 274 and 280F, the section 132 rules are just as bad. For example, employers must instruct their employees to keep records of their personal and business use of an automobile, and then gather up these records every quarter and review them employee-by-employee for purposes of income imputation, withholding, and payroll taxes. This chore cannot be "software'd" or otherwise automated. The personal and business use records of each employee will be different. In fact, the records of any given employee will be different quarter by quarter. Is there any doubt that these tasks—undertaken by every salesman, delivery person, rancher, realtor, police officer, and so on across the nation, and their employers—is a waste of the nation's resources? The only debate, it appears, is whether this is more of a waste than the time spent reviewing labor contracts and pension plans.

Last, but by no means least, it appears the Treasury was not ready for the new rules. That is what a prudent man would infer from the regulations the Treasury published to guide taxpayers in this area. For example, Congress made it clear that security and safety concerns could cause what might otherwise be a fringe benefit to be non-taxable. An example would be where the Speaker of the House is driven to and from Congress each day. But the Treasury reasoned that although the full value of the car and driver might not be taxable, the Speaker was still getting to work free. So, concluded the Treasury, some portion of the commute still must be treated as a taxable fringe. Did the Treasury give the Speaker any help as to what portion this might be? No way. Perhaps it's comparable bus fare, perhaps the cost of a taxi, perhaps a per mile charge. But at least the Treasury did not leave the Speaker in the dark all by himself. The President's accountants must be struggling with his use of Air Force One and Camp David. And the CEO's of multinational corporations, big city mayors, entertainment personalities, and every other public figure legitimately concerned about kidnapping, terrorism, or just plain kooks, must be in a similar quandary.

Nor is this the only example of ambiguity and confusion in the regulations. Before one can determine the proper tax consequences of a flight on a private airplane, for example, one must determine the purpose of the flight by the airplane, the purposes of the flight by the employees on the plane, the extent to which these purposes match, and the rank of the employees. Worse, one must determine these things by using the vague tests set forth in the regulations—the "some business" test being perhaps the worst.

Congress has started to react to all of this. Several bills have already been introduced to correct section 132 on a piecemeal basis. But piecemeal action cannot be the answer where it is so clear that no one was ready—certainly as of January 1—to comply with the new rules and address the many collateral issues implicated. Congress has passed moratoriums in the past in the fringe benefit area, and it is proposed that one is necessary again.

RAYMOND J. WIACEK,
Jones, Day, Reavis & Pogue, Washington, DC.

STATEMENT OF HON. TOM LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I want to commend you for holding this hearing to evaluate the regulations issued by the Internal Revenue Service (IRS) relating to the record keeping requirements for automobiles and certain other property.

I appreciate the opportunity to testify before the committee today, and I want to join many of the other Members of Congress and organizations testifying before you to urge the committee to report legislation to repeal the "adequate contemporaneous" record keeping requirement provision of the Deficit Reduction Act of 1984.

I have received thousands of letters and phone calls from constituents who are trying to comply with the record keeping requirements but are finding them ridiculously burdensome, both in terms of cost and time required to implement, and disruptive to their businesses.

On a national level, it has been estimated that the cost of compliance by the taxpayers is between \$2 to \$3 billion!! When this is compared with the estimated revenue gain to the Treasury of \$100 to \$200 million, it is clear why Congress must take immediate action.

Although the revised regulations, recently issued by the IRS, solve some of the problems associated with the record keeping requirement, they do not attain the proper balance between the burdens being imposed on taxpayers and the need to insure that the deductions claimed are legitimate. The revised regulations also do not adequately address many of the arbitrary and inequitable applications of the requirement.

I urge the committee to act expeditiously and remove the burdensome record keeping requirements from the backs of the taxpayers.

CHARLES LUCAS SALES Co.,
Dallas, TX, March 4, 1985.

HON. MARTIN FROST,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN FROST: Thank you for replying to my letter regarding the new IRS regulations governing records-keeping for the business use of automobiles.

I find it encouraging that steps are being taken to look at these new requirements in depth. My feeling is that a repeal is in order.

The modifications recently passed do not relieve the burden for the businessman who uses his automobile for business purposes 90 to 95 percent of the time. These are the people who should be exempt rather than the automatic 70 to 80 percent that the modified version allows.

Again, our purpose is not to avoid taxation. Our purpose is to spend our time working at our business, not keeping records for the IRS.

We will appreciate any help you can offer in removing this regulatory burden.

Very truly yours,

STEVE LUCAS.

MARELCO POWER SYSTEMS, INC.,
Howell, MI, February 21, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Ways and Means Committee, Longworth Building, Washington, DC.

DEAR MR. DOWLEY: This letter is for the use of the Treasury Department in its forthcoming hearings and reconsideration of record keeping regulations for automobiles and certain other property.

Legitimate business expenses occurs in many different ways. Their characteristics as "ordinary and necessary" have always been subject to normal scrutiny and burden of proof requirements in our self assessment based taxing system. The levels of proof required have traditionally depended upon the facts and circumstances in each taxpayer's particular case. Sometimes certain expenses are questioned by taxing authorities and when they are not supported by reasonable evidence their deductibility is determined by negotiation and sometimes litigation.

The point is these systems work, and both taxpayers and taxing authorities have learned how to work with them.

Now, along comes the Treasury department fanning the sensibilities of Congress with tales of "abuse." As a result of the paranoia raised by these concerns, costly

and burdensome record keeping regulations have been promulgated. They single out but a few areas where perceived "abuses" may happen.

The problem with this approach is that it now allows deductions to the individual doing the best at keeping these records rather than those to whom the deduction may properly belong. The "records keeping" approach penalizes honest and industrious taxpayers by utilizing harassment above the normal level of information interchange to impose short term social objectives. This piecemeal approach to tax policy is detrimental short run and disastrous long run for it adds to the prevailing perception that our tax system is unfair, thus encouraging efforts to defeat it by any means whether legitimate or not.

Automobiles, airplanes and other tools of business are no different from lathes or trucks. To single any one out for harassment hurts us all.

Very truly yours,

PETER H. BURGHER, *President.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 27, 1985.

Hon. DANIEL ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Longworth Building, Washington, DC.

DEAR MR. CHAIRMAN: I wish to be recorded as favoring those bills that repeal Sec. 179 of PL. 98-369, The Deficit Reduction Act of 1984.

These temporary regulations, particularly the record keeping requirements on autos used in the conduct of business, prove not only to be onerous but harass small businessmen, service companies and their employees.

I do not quarrel with the original intent, to curb the unsubstantiated "business" use of luxury cars and the incipient business "perks" that they provide. However, the "hamstringing" of legitimate small business is disastrous.

I know that the Committee on Ways and Means, in its wisdom, will present us with a clean bill that gets to the heart of the abuses and protects the legitimate use of autos, vans, trucks for business and service. Such a measure I will be happy to support.

NICHOLAS MAVROULES,
Member of Congress, Sixth District, Massachusetts.

JIM & HARVEY McCOWN,
Bakersfield, CA, March 1, 1985.

Hon. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth Office Building, Washington, DC.

DEAR MR. DOWLEY: This issue has generated a lot of discussion. However, I have not seen the following two philosophical questions considered:

1. How intrusive should the tax rules be in the taxpayer's daily business activities?

2. Does the rule have taxpayer backlash potential?

Reasons for these new rules include making the tax system fair and heading off a taxpayer rebellion. The thought was that if the taxes were fair, there would be less of a problem with proper compliance. This concept of fairness was to be promoted by eliminating excessive auto deductions. Then, according to this theory, the taxpayers would be more inclined to acquiesce to all of the tax rules.

It is obvious that the theory did not work out in practice. It would be simplistic for Congress and the IRS to interpret this as taxpayers attempting to protect their deductions. Many people are extremely concerned about the intrusiveness of these rules. It is this aspect that many people are finding extremely disturbing—the government intruding into the everyday business activity—the "1984" Orwellian concept.

I have been involved in the tax process for 20 years. In the past, a taxpayer faced an undesirable rule once a year. He might be upset for a few days, but then he went on about his business. Now, the auto-log rule reminds the taxpayer of a tax battle everytime he gets in the car. Perhaps a psychologist could explain it better, but it appears that this would create animosity on the taxpayer's part far in excess of the once a year approach.

In all the commentary on this subject I have not seen any consideration given to the taxpayer's reaction to a proposed rule.

I would hope that the IRS and Congress, particularly Congress, would give consideration to taxpayer reactions prior to writing a new law or issuing new interpretations. This is not to justify cheating, but to help move the country to stronger moral grounds in the tax law system. We clearly need simplification, fairness, better compliance, etc. However, a heavy handed approach lacking wisdom may cause the tax rebellion that it is intended to stop. Perhaps many small steps are needed instead of one giant leap. It is very important that the taxpayer/voter reactions be considered with any new regulations and legislation as we attempt to improve the moral caliber of our tax system.

As grandma used to say, "Sometimes the cure is worse than the disease."

Sincerely,

HARVEY J. MCCOWN.

STATEMENT OF MCGLADREY HENDRICKSON & PULLEN

We are grateful for the opportunity to express our views of the temporary and proposed regulations on automobile recordkeeping requirements. McGladrey Hendrickson & Pullen is a 75 office accounting firm, ranking 12th largest nationally. Since the enactment of the Deficit Reduction Act of 1984, we have spent a great deal of time trying to understand the evolving regulations on contemporaneous recordkeeping for business vehicles.

McGladrey Hendrickson & Pullen appreciates the Treasury Department's concern that prior law provided taxpayers willing to play the audit lottery with unmerited deductions. We have a great interest in seeing clients claim proper deductions with confidence. Our clients are not anxious to subsidize dishonest taxpayers, and our firm risks the loss of clients to other less scrupulous preparers if the law is unclear or if the law is not enforced.

As Certified Public Accountants, we understand the Treasury Department's desire to have taxpayers document each business trip when it is completed and provide detailed supporting data. In theory, this represents a good method for ascertaining actual business use. In practice, application of the theoretical approach is presenting compliance problems. Also, the theoretically correct answer may not be cost effective for either the government or taxpayers.

A fundamental concern of the Firm is the impact of these regulations on taxpayer compliance. The hostility of clients to those new requirements is difficult to over-stress. Many clients have informed us they do not intend to keep records and will forego legitimate business deductions. Others have advised us that they do not intend to comply with the law and will file their returns themselves. Clients view the requirements as an example of government overreaching into their private lives on what they view as an obvious business expense. Further, they resent the imposition of a contemporaneous recordkeeping requirement on them. This is a function they view as more properly residing with accountants, bookkeepers and officials within the federal government, rather than entrepreneurs, like themselves, actively engaged in business. To businessmen, the recordkeeping requirements represent a substantial additional administrative cost which is not only extraneous to their commercial goals, but hinders their progress in achieving these goals.

We are concerned that many honest taxpayers who were making a reasonable estimate as to business use of a vehicle have concluded that the size of the deduction does not justify the recordkeeping effort. These taxpayers are foregoing a legitimate deduction because the government has significantly increased the transaction cost of claiming the deduction. This approach seems to favor firms who do not monitor costs closely or who are seeking very substantial deductions. The government-imposed costs force many well-managed firms to stop claiming a deduction to which they are properly entitled.

While penalizing a class of honest, cost conscious businesses, the provisions do not address the problem of dishonest taxpayers who falsify or fabricate contemporaneous records. The individual who is outrageously dishonest and fabricates log entries will be able to claim a deduction unless his return preparer or the IRS suspects the logs are not reasonably accurate.

Additionally, we think these required log books may be very difficult to audit. For an IRS agent to reconstruct the route salesman X took between Middleton and Pleasanton is an inefficient use of government resources. To mire practitioners and revenue agents in an argument as to whether or not the entry is contemporaneous and the distance noted is correct is not a cost effective endeavor for either party.

The difficult problems of auditing logs assist unscrupulous taxpayers who reconstruct all of their entries. While the new law requires preparers to obtain certification from clients that the records submitted meet the requirements of the law, individuals who prepare their own returns have no certification requirements.

Not only are we concerned about the absence of certification requirements for individually prepared returns, we have serious reservations about the statutorily required certification procedure. Return preparers are required to advise taxpayers of the substantiation requirements and obtain written confirmation from the taxpayer that such requirements are met before a deduction is claimed. As tax advisors, we are concerned that the certification requirements attempt to shift the enforcement burden from the IRS to practitioners. Clients sign returns under penalty of perjury accepting responsibility for the truth, accuracy and completeness of the information on the return. Preparers sign returns under penalty of perjury that the returns are correct based on all information of which a preparer has any knowledge. We do not understand why a client should be asked to certify to his or her return preparer that a log is accurate and within the requirements of the law, when the client signs the return under penalty of perjury. This is especially puzzling since a taxpayer's signature on the perjury declaration is sufficient without independent certification of a log, if the taxpayer prepares his own return. We are concerned that Congress has shifted an enforcement burden to us that more properly should remain with the IRS.

Additionally, return preparers are required to advise clients of the substantiation requirements. This requirement is not limited to the substantiation requirements for employee use of business automobiles, it includes the substantiation requirements for all business deductions claimed under Section 162 and Section 212 for travel and entertainment expense.

Many questions remain unanswered with the new contemporaneous record provisions. It is difficult for full-time professional tax advisors to understand the nuances of these rules. To expect professional tax advisors to explain the new rules and all the old substantiation requirements for travel and entertainment expenses to each client is unreasonable.

Also, we are concerned that these statutory requirements shift some responsibility for the accuracy of the information contained within the return from the client to the preparer. If clients feel they can give their preparers inaccurate information and successfully assert an innocence of the law defense, the national compliance effort will suffer.

Since we are required to perform governmental duties in certifying logs and advising clients of the old and new substantiation requirements, who should pay for this service? In our view, the government is the direct beneficiary of these requirements and should bear the cost of compliance.

We feel the new regulations should be subjected to a rigorous cost/benefit analysis. On the benefit side, the limitation of the investment credit and accelerated depreciation, the requirement of 50% business use of all listed property and the new substantiation requirements are anticipated by the Joint Committee on Taxation to yield the federal treasury \$700 million from 1984-1987. Unfortunately, no independent revenue estimate exists as to the projected revenue gain from the substantiation requirements alone. The new requirements may have the additional benefit of inhibiting abusive taxpayers from claiming deductions to which they are not entitled. Previously, these aggressive deductions were only detected if the individual was selected for audit. To the extent all taxpayers are required to keep contemporaneous records and do not fabricate those records, taxpayers should be more reticent to claim unwarranted deductions.

Do these benefits outweigh the societal costs? As already mentioned, logs are difficult for both the IRS and practitioners to verify. While the regulatory modifications have provided relief to some deserving classes of taxpayers, they have also created substantial confusion. Some of our offices estimate that each partner and manager devotes one hour per day explaining the provisions to clients. Once clients understand the evolving provisions, they must then promulgate corporate policy and advise their employees about the latest rules. If their employees understand the new requirements, the client's bookkeepers must devote time to organizing and compiling the data. The procedure outlined above is a best case scenario. It does not include particular client problems that might not have been addressed in the regulations, for instance, the recordkeeping responsibilities of tax-exempt entities of governmental units. The simple case of implementing the recordkeeping requirements is a significant expense for our clients in both money and time.

We are concerned that this compliance cost detracts our clients from their fundamental business goals and reduces the gross national product. Each minute spent

documenting a trip, compiling monthly time sheets, advising and reminding employees of the rules and seeking professional advice on the evolving requirements of the law is a minute subtracted from national productivity. For the country, these compliance costs represent decades of time and millions of dollars. These costs are added to the price of the goods and services we as a nation produce, hindering our progress in marketing American goods and services abroad and reducing our trade deficit. We question whether our trading partners, who enjoy a trade surplus with the U.S., are imposing these types of administrative costs on their producers.

We are also concerned that these records will not be useful because of the inherent difficulty in verifying their accuracy. The records may also be inaccurate because employees have an incomplete understanding of the log requirements. Since the evolving regulations have confused many professional tax advisors, it is unlikely that all employees have fully understood the rules and complied. We question the wisdom of requiring records to be kept which could be inaccurate and not really susceptible to verification.

At the current time, we feel the cost of the recordkeeping requirements outweigh their benefit. To gain the unknown portion of the \$700 million, three year revenue gain, our clients are incurring substantial costs in understanding and complying with the new regulations. This cost dampens their productivity and is collectively reflected in a lower Gross National Product.

If the recordkeeping requirements are retained, we have some suggestions on further modifications. First, temporary regulations published in the Federal Register on February 15, 1985 provide significant relief to deserving classes of taxpayers. We agree with the approach taken in the regulations and urge your consideration of a proposal to create additional safe harbors for certain industries and types of businesses. Industry business use percentages could be based on representative samples of industry usage. While industry percentages may represent rough justice, taxpayers could be given the option to maintain contemporaneous records if they could substantiate greater business usage. This option permits taxpayers to make their own cost/benefit analysis as to whether recordkeeping is cost effective. We recognize the difficulty in defining industries, but suggest that the effort to develop good definitions for safe harbors is a worthwhile endeavor.

Additionally, we recommend tougher penalties for taxpayers who falsify documents at year-end. It is our view that standard industry percentages would relieve most taxpayers of recordkeeping responsibilities. Once many of the honest taxpayers can claim safe harbor protection, we feel it is appropriate to punish people who abuse the provision. We feel it is fair to extract a substantial penalty from individuals with false documentation if safe harbor protection is granted to a larger class of taxpayers.

We appreciate the opportunity to submit written testimony and would be happy to respond to any questions members of the committee might pose.

GRAND PRAIRIE, TX, February 25, 1985.

HON. MARTIN FROST,
House of Representatives,
Washington DC.

DEAR REPRESENTATIVE FROST: Thank you for your letter of Feb. 22, 1985, advising me of the committee hearings regarding record-keeping for business use of automobiles.

My comments to the committee involve more than just the issue of record keeping. That is bad enough, but I am just as concerned about the direct economic impact of this new legislation (it is nothing more than a tax increase) and its negative results on the American people.

I would also complain about the taxing of benefits in general. It is bad precedent and horribly depressing to think that just when one thinks they are moving ahead, Congress via the IRS comes and pushes you back. Taxes are bad enough, but when you start taxing noncash benefits it hurts even more. Taxes of this sort will also drive up the cost of doing business, prices will have to rise and we will all be worse off (except of course the ones who receive part of the money that was taxed away from the one who earned it).

I would like to request to repeal, not only of the record keeping burden, but of the entire legislation surrounding the taxation of the use of business (i.e. company supplied) automobiles.

Thank you for your understanding.

Yours truly,

WAYNE METCALFE.

STATEMENT OF HON. DANIEL A. MICA, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF FLORIDA

Mr. Chairman, I appreciate this opportunity to share my opposition to the IRS requirement that a contemporaneous log be kept to support the deduction for any claimed business use of an automobile.

It is my belief that the increased paperwork and overall burden of adhering to these changes will result in a significant loss of productivity for the businessmen and women of this country.

This change in the law has added unnecessary regulations that only increase frustration with the tax code and waste valuable time and energy.

If the economy is to continue to grow, the Congress must resist the temptation to add further obstacles to business. I support efforts to reduce the deficit, but these new regulations only serve to frustrate the honest and hard working businesses that keep our economy strong and they serve no substantial deficit reduction purpose.

This hearing is an important step in addressing the resentment and frustration that is building in our business community over these regulations. As is the case with all my colleagues in the Congress, my office has been contacted by ever increasing numbers of constituents who oppose these IRS regulations.

I am encouraged to note that Congressional opposition to this provision has continued to grow. I have introduced and supported legislation to repeal these regulations and I urge immediate action on this problem. Mr. Chairman, I commend you for your leadership in holding these hearings and look forward to working with you to repeal these burdensome regulations.

MINING AND RECLAMATION COUNCIL OF AMERICA,
Washington, DC, March 11, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Ways and Means Committee, U.S. House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN ROSTENKOWSKI: In his testimony before the Committee on the Treasury Department's implementation of the contemporaneous recordkeeping requirement to substantiate business use of vehicles imposed by the Deficit Reduction Act of 1984, the Assistant Secretary for Tax Policy stated that Treasury was "willing to work with (the) Committee to develop reasonable recordkeeping rules for taxpayers to substantiate the business use of vehicles." In this regard, I am writing to call your and the the Committee's attention to the need for a special rule for the surface coal mining industry. The circumstances within which the surface coal mining industry operates, I should add, are similar to those of highway construction or oil and gas well development and tending and should be covered by a common special rule.

The Members of the Mining and Reclamation Council of America (MARC) are engaged in the activity of mining coal. This activity is always away from a central office, shop, or garaging area. Most companies normally will be operating several mines simultaneously, often 25 to 100 miles apart. In order to maximize the use of the workforce and to accommodate transportation in difficult terrain (often unpaved roads), the common practice of most operators is to provide vehicles for its supervisory and other selected employees to enable them to effectively move from one work site to another; to be able to have access to the worksites; and, through the use of two-way radios in each vehicle, to maintain contact with other employees in the field. The general practice is to assign the vehicle to such individuals on a full-time basis and to have the individuals garage the vehicles at their homes. This practice reduces the amount of time needed for the individual to get from his home to the worksite by not requiring him to come to a central garaging location to pick up the vehicle he will use in the field.

It is obvious that these vehicles are used primarily for business purposes. There will be some personal use as running errands in the evening or picking up a child from school, etc. The primary facts, however, are that the vehicle is provided by the employer to the employee to facilitate that employee's performance of his job responsibilities and to permit the employer to obtain maximum use of the employee's time. The employee, it should be noted, would not have use of this vehicle were it not for the business purposes of the employer.

As a consequence, I request that the Committee advise the Treasury Department to promulgate a special rule for the surface coal mining industry and industries with similar circumstances exempting vehicles used in the business conduct of the industry from the contemporaneous recordkeeping requirements of the regulations.

Treasury could act to assure taxpayers compliance by requiring certification of the business purpose for assignment of the vehicle.

Failure to promulgate a special rule will necessitate the burdensome task of each such employee and his employer maintaining logs and travel records which would merely confirm the obvious, that these vehicles are used almost totally for business purposes. This unnecessary paperwork burden, currently required by the regulations, serves no useful purpose other than further requiring the use of the employer and employees time for a non-productive government imposed paperwork requirement.

On behalf of MARC's members, I encourage you to request that the Treasury Department address our concern, or, should they not, to favorably report legislation amending the contemporaneous rulekeeping requirement which addresses the problem outlined above. Should you or your staff have any questions regarding our concern, please contact me.

It would further be appreciated if you would incorporate this correspondence into the Committee's March 5 hearing record.

Sincerely,

DANIEL R. GERKIN,
President.

MOTOROLA, INC.,
Washington, DC, March 7, 1985.

HON. DAN ROSTENKOWSKI,
Member of Congress, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN ROSTENKOWSKI: Attached is a copy of Motorola's response to the IRS proposed and temporary regulations on the taxation of certain fringe benefits and on the new contemporaneous recordkeeping rules enacted as part of the Deficit Reduction Act of 1984.

It is my understanding that the House Ways and Means Committee held a hearing on March 5 to explore these regulations. I know that many members of both the House and the Senate have also questioned these proposed regulations. The withholding provision is particularly cumbersome and expensive to administer. Hopefully, our attached response will answer some of your questions from an industry point of view.

Thank you for your consideration of this matter.

Sincerely,

C. TRAVIS MARSHALL,
Corporate Vice President, Director Government Relations.

Attachment.

MOTOROLA, INC.,
February 4, 1985.

Re Proposed and temporary (T.D. 8004) Internal Revenue Service regulations on taxation of fringe benefits filed January 2, 1985.

Commissioner of Internal Revenue,
Attention: CC:LR:T(LR-216-84)
Washington, DC.

DEAR SIRS: Motorola, Inc. is highly sympathetic to Congress' desire to reduce the national deficit. Reducing the deficit is a goal that must be satisfied to sustain the current economic recovery. However, we do not believe that the recordkeeping rules, the rules affecting company-owned cars (as enacted in the Deficit Reduction Act of 1984) and the proposed fringe benefit regulations are appropriate devices for increasing Treasury revenues.

We believe the Treasury regulations on valuing the use of an employer-provided automobile or airplane flights are unfair and should be withdrawn. We believe that the recordkeeping burden placed on employees and employers is unreasonable.

We believe that the long-term effects of the rules on the economy will be detrimental. Therefore, we offer the following comments for your consideration in drafting final regulations on these subjects. Additionally, we request a public hearing on these subjects so taxpayers can express their views.

I. AUTOMOBILES

A. The special rule for valuing an employer-provided automobile

We believe that there must be a change in the "special rule" for valuing the benefit received by an employee using a company car. First, the rule implies a precision that does not in reality exist. The rule for cars placed in service before 1985 is based on the value of the automobile at January 1, 1985, which is highly speculative. The fair market value of two different automobiles of the same manufacturer's model can vary substantially based on the maintenance schedule followed, number and type of miles driven, etc. Clearly, therefore, value is at least partly subjective and that subjective value will determine how much income is imputed to an employee.

Second, determining the value of a fleet of hundreds or thousands of cars is an unreasonable, and costly administrative burden to place on an employer. One can easily foresee ridiculous controversies with IRS agents over the "true" value of a particular car at the relevant date. If there is no transaction to establish the value, there is no definitive way under the current regulations for an employer to establish a safe harbor for his auto valuations. Even with a transaction value (such as a purchase), the regulations provide that a group or volume discount must be ignored. In many instances, such discounts will not be easily determined.

Furthermore, the rules are somewhat nullified by the provision in the regulations which states that "neither the employer nor the employee is bound by the other's use of a special rule." As a result, an employer can spend thousands of dollars valuing its fleet and spend thousands of hours to administer its automobile program fairly, only to have an employee totally ignore all the employer's efforts.

We, therefore, feel that the "special rule" is not rooted in reality and must be substantially overhauled to be both fair and effective. However, any changes should include a "safe harbor" rule which will protect employers from unreasonable and unsolvable controversies with IRS agents over minor issues in the employer's program.

B. Withholding

Additionally, the imputed income rules in the fringe benefit regulations present a definite problem for employers. As currently designed, the vast majority of payroll systems are not capable of withholding taxes on non-cash benefits. Consequently, to comply with the requirement that tax be withheld from non-cash compensation, employer must redesign their payroll systems. The cost of such changes will not be minor. Until such changes are made, all deductions must be *manually* input to the system. In our case, where we have over 4500 company cars, the burden is obvious. We believe this is an unreasonable cost for employers to bear, especially since it will not affect an employee's ultimate tax liability, only the amount withheld. We feel strongly on this point, especially as employees are not bound by the employer's choice of the "special rule."

Even if the manual input is put aside, insisting on deducting FICA is an even greater problem because the imputed income must be done on a cumulative basis and FICA calculated manually, again for 4500 employees. We estimate we will have to add several people to our payroll departments and accounting function to tract the imputed income and make the manual adjustments. This is certainly not helping us to be competitive with the Japanese and European companies in our businesses.

C. The contemporaneous recordkeeping rules

The new contemporaneous recordkeeping requirements (enacted as part of the Deficit Reduction Act of 1984) represent an administrative nightmare for large companies with auto fleets. Many Fortune 500 companies own more than 5,000 company cars, which are an ordinary and necessary part of their business activities. To handle the impossible paperwork burden the new rules impose on such a fleet, companies will have to increase their administrative costs and will have to shift employees from more important and more lucrative activities. Such employees will be performing tasks of no value to their employer, and their paperwork chores will aid no one.

Furthermore, the recordkeeping rules encourage fraud and forgery. Employees who use company cars are encouraged by the new rules to generate as much business mileage as possible, thereby reducing the income imputed to them from the personal use of a company auto. An employer with hundreds or thousands of cars will be unable to monitor or to verify the business/personal mileage of all employee drivers. Consequently, fraudulent mileage records will be common and only honest employees will be detrimentally affected by the imputed income rules. We do not believe that the new rules should either encourage employee fraud or require an

employer to enforce questionable IRS rules. We believe the recordkeeping rules must be either eliminated or substantially modified.

This necessity is clearly shown by the fact that recordkeeping rules have already forced a number of large corporations to eliminate or reduce their automobile fleets. If the rules are not modified, the trend will continue and the automobile industry will be severely hampered, and probably damaged. If sales employees, for example, are required to obtain their own cars, they will purchase less expensive cars and will retain the cars for a longer period of time than their employer would. Sales of U.S. made cars will undoubtedly decline over the long-term as a result of the new recordkeeping rules. Consequently, more U.S. jobs will be lost of foreign countries and the taxable income of automakers and their supplier will decline. Any revenue increase to Treasury from the new rules will be more than offset by the long-term effect of the rules on the U.S. economy.

II. FLIGHTS ON EMPLOYER-PROVIDED AIRPLANES

A. The special rule

With regard to flights on employer-provided airplanes, we believe the temporary regulations erred in ignoring the rationale of *Vesco v. Commissioner*, 39 TCM 101 (1979). In *Vesco*, the tax court refused to assess income for flights provided to the taxpayer's family members who occupied what otherwise would have been vacant seats on his business flights.

We believe the rationale in *Vesco* is correct, fair and should be embodied in the final regulations. Where the employer incurs no additional cost due to a family member accompanying an employee on a business trip, income should not be imputed to the employee for the family member's flight.

Furthermore, the "special rule" for computing the value of a flight on a employer-provided flight is too complex and is unfair. The Standard Industry Fare Level (SIFL) rates require numerous calculations to arrive at the valuation of a flight. Additionally, the fact that the calculations will change every six months is an unnecessary complication. Furthermore, the SIFL multiples are highly arbitrary and bear no relation to any reasonable or rationale application of the law.

We, therefore, request that the final regulations 1) embody the rationale of *Vesco* where the employer incurs no additional cost as a result of a nonbusiness passenger's flight and 2) include a simpler, fairer method for calculating the amount of income an employee will recognize in other situations.

III. CONCLUSION

In conclusion, we believe that the proposed and temporary regulations on taxation of fringe benefits filed January 2, 1985, are unfair, unworkable, unrealistic and impose an intolerable paperwork burden on large corporations. We, therefore, believe that substantial modifications must be made to the regulations before they are issued in final form. We request that the final regulations embody our above comments and that they be practical. For only by being practical can the final regulations be of value.

Sincerely,

H. RICHARD KLOTZ,
Corporate Vice President, Director of Taxes.

STATEMENT OF DENIS R. ZEGAR, VICE PRESIDENT, GOVERNMENT SERVICES, NATIONAL-AMERICAN WHOLESALE GROCERS' ASSOCIATION

Mr. Chairman and Members of the Ways and Means Committee: My name is Denis R. Zegar and I am Vice President for Government Services of the National-American Wholesale Grocers' Association, commonly referred to as "NAWGA." I very much welcome this opportunity to testify before the Committee concerning efforts to amend the "contemporaneous record keeping" requirements for automobiles used for business purposes and contained in the Tax Reform Act of 1984 (Public Law 98-369).

By way of background, NAWGA is a national non-profit trade association which represents nearly 400 independent wholesale grocers and foodservice distributors who employ over 250,000 people. These member companies, both large and small, supply grocery products and provide a wide array of services to retail grocery stores, hospitals, schools, restaurants, and other foodservice establishments throughout the United States.

Marketing products from over 700 separate distribution centers, NAWGA member firms account for nearly \$50 billion of the Nation's grocery product volume and one-third of the grocery supplies distributed nationally. NAWGA's foodservice division, the International Foodservice Distributors' Association (IFDA), represents member firms that sell annually over \$10 billion in food and related products to the institutional, away-from-home foodservice market.

The wholesale grocery business is uniquely different from all other businesses operating at the retail level. Grocery sales are generated primarily through a substantial "sales representative force." NAWGA member companies employ management and sales personnel who require and use company cars to conduct their business. It is fairly typical that a salesperson will drive 30,000-50,000 business miles and make as many as 3000-4000 business calls annually. NAWGA member companies may have a fleet of cars as small as 30 for smaller foodservice operators and as many as 600 for larger wholesale grocers. In addition to company automobiles, many member companies have need for and make use of light trucks and vans.

The overall consensus of NAWGA member companies is that the final draft of the proposed regulations still goes far beyond the intent of Congress, and creates a nightmare of needless paperwork and recordkeeping, and is too complex and vague. The proposed regulations make lawful compliance nearly impossible. Since the original regulations were proposed by the Internal Revenue Service, NAWGA has been inundated with calls from our membership asking relief from this massive and expensive recordkeeping and paperwork burden that is interfering with normal business operations.

Even after the final draft of temporary regulations was published, our members continue to emphasize that the amended IRS regulations do not go far enough to correct this fiasco. NAWGA member companies believe that we should return to our former system of recordkeeping, which was not perfect, but did work! Last week, NAWGA held its annual Washington Public Affairs Conference where approximately 200 food industry executives were in attendance. At that Conference, repealing the recordkeeping requirements was a popular topic of discussion and a major concern.

In particular, the amended regulations:

1. do not exclude light duty trucks, most vans, and other utility vehicles consistent with the legislative history and intent of Section 179 of the Tax Reform Act. As Congress is aware, Section 179 was intended to rectify a perceived abuse whereby taxpayers were subsidizing the purchase of "luxury" cars through the tax code. Clearly, few light trucks, vans, or other utility vehicles fall within the meaning or understanding of "luxury" cars;

2. in the case of fleet vehicles owned or leased by an employer and used by employees in connection with the employer's trade or business, the proposed amended IRS regulations are equally burdensome and ignore businesses, with fleets less than 100. The newly proposed IRS regulations would require that:

The employer would identify a class of at least 100 vehicles that are physically similar and that are used in a similar fashion,

In each taxable year, the employer would choose a random sample of the class of vehicles using accepted sampling techniques,

The sample size would preferably be at least 250 vehicles, or one-half the class in the case of fleets of less than 500 vehicles, and

The percentage of average business use of the vehicles in the sample would apply to the class if determined from records of actual use kept for these vehicles.

The fundamental question that IRS ignores is that most companies do not have fleets in excess of 100 cars. Do we ignore these companies? We think not. As one of our members stated in a letter to Congress regarding this provision, "they talk about taking a random sample from a fleet of 100 cars and using the percentage of average business use from this sample as the percentage applicable to the whole fleet. We do not run a 100 car fleet, we run about 50 and we have followed this procedure by developing average percent of business miles for our whole fleet and this is the basis for our deduction for personal use for each employee who has a company car. It would seem to me that even though we don't have 100 cars, our procedure should be acceptable to the IRS."

We agree? Business is the best judge of what is business related use and what is not.

It is clear that NAWGA member companies wish to comply with the intent and the spirit of the law. However, even with the changes in the proposed regulations we feel they remain impractical and burdensome and do not provide legitimate guidance to taxpayers. We do not object to being taxed for the personal use of business vehicles. However, we strongly object to these unrealistic burdens imposed in

order to obtain a legitimate tax deduction. Therefore, NAWGA wholeheartedly commends the 49 cosponsors in the Senate and 119 cosponsors in the House who have added their names to legislation that would repeal the "contemporaneous recordkeeping" requirement of the Tax Reform Act of 1984. NAWGA will work diligently to see that the contemporaneous recordkeeping provision is repealed.

On behalf of our membership, I would like to thank the Committee for allowing me to present the views of NAWGA.

STATEMENT OF EDWARD O. FRITTS, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

My name is Edward O. Fritts. I am President of the National Association of Broadcasters ("NAB"), a trade association representing over 4,500 radio and 800 television stations, including all the major networks and groups. I appreciate the opportunity to submit testimony to this Committee on the issue of the automobile recordkeeping requirements promulgated by the Internal Revenue Service under authority of Section 179 of the Tax Reform Act of 1984.

Congress enacted Section 179 due to concerns that many taxpayers were taking advantage of the favorable tax treatment given automobiles and other property used in the conduct of a business. Congress believed that certain taxpayers were improperly taking advantage of the investment tax credit and accelerated depreciation for vehicles that were in fact being operated primarily for personal use. Congress feared that taxpayers might be deliberately overstating business use through utilization of inexact, after-the-fact recollections to support tax return treatment of auto use. Thus, Congress turned to the requirement that "adequate contemporaneous records" be kept, as set forth in Section 179.

The authority to issue regulations under the statutory section was delegated to the Secretary of the Treasury, and, thereby, to the IRS. The recordkeeping and related changes made also impact on use of other types of transportation, computers, and travel and entertainment expenses. The estimated revenue gain from all the related changes is \$150 million in FY 1985, and \$233 million in 1986, with some increase in each subsequent year.

NAB is opposed to the fair implementation of our nation's tax laws. We believe that equitable application of the tax laws is necessary to the ongoing economic viability of our nation. In the case of Section 179, however, it appears that the Congress and the IRS have used a regulatory cannon to approach a problem for which something significantly less drastic might have been more appropriate.

The new temporary regulations issued by the IRS on February 15, 1985, are somewhat of an improvement over the initial IRS regs. The new regs make useful changes in the format in which records can be kept, reduce the frequency of required entries, and make provision for reconstruction of lost records. Additionally, exceptions are made which would reduce the regulatory impact on many of our members.

Nonetheless, NAB believes that such a substantial and unnecessary regulatory burden remains as to suggest to us that the American people will best be served, and our revenue system best served as well, by the repeal of Section 179(b) and a return to the substantiation requirements that existed prior to the 1984 Act.

Let me highlight a few of the problems we find in the new IRS regs:

(1) The special substantiation rule for vehicles whose only nonbusiness use is in commuting is not made available if the employee using the vehicle is an officer or one percent owner of the employer. This provision will be particularly burdensome to small businesses, including small radio stations, which are frequently family operations in which the staff is largely made up of individuals with an ownership interest. Thus, while other employees' commuting use can be allocated a value of \$3 a day, the small business owner-operator, who can least bear the burden, will be forced to keep more complex daily records.

(2) Those seeking to use the exception provided vehicles used for multiple business stops are forced to accept a safe harbor treating 30 percent of all use as personal, or to maintain records on personal use which are virtually as burdensome in volume as those previously required on business use. The recordkeeping burden remains so significant that some business people may choose to accept the inequitable 30 percent safe harbor rather than resort to the logging necessary to obtain the actual tax treatment to which they are entitled.

(3) The regulations may require a complex system of allocation of the business and personal use of vehicles operated by more than one employee. For all licensees, such regulation makes running a business extremely difficult.

(4) Finally, for those whose automobile use does not fit into one of the four new exceptions, and they will be many, the old logging rules, in only slightly less painful form, remain in force.

We do not doubt that there are those who abuse our tax laws. But in the interest of catching the few, Congress and the IRS have imposed an absolutely unacceptable burden on the many. The costs imposed on the business community will likely be greater than any revenue gained by the Treasury. We urge the Congress to repeal Section 179(b), and then to conduct an empirical study of the actual dimensions of the problem, seeking, as well, a useful, less economically destructive way of solving any real problems found.

Additionally, we urge the Congress to redefine the tax treatment of commuting use of a company vehicle undertaken for the convenience of the employer. We do not believe that such use should, at least in circumstances faced by broadcasters, be treated as income to the employee. Numerous news personnel are required to take home company cars, which are equipped with two-way radios and other necessary tools of the trade. A news person is never really "off duty." The vehicle is there, at the request of the employer, to enable the employee to do his or her job. Even calculating that under the special formula, the income involved is slightly less than \$800 a year, this is perhaps a substantial amount of taxable income for most broadcast employees. We believe that this use of the vehicle is essentially for a business purpose and should be so treated.

We appreciate the Committee's consideration of this presentation.

Thank you very much.

NATIONAL ASSOCIATION OF COLLEGE & UNIVERSITY BUSINESS OFFICERS,
Washington, DC, March 8, 1985.

HON. DAN ROSTENKOWSKI,

Chairman, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the National Association of College and University Business Officers, an association representing over 2,000 colleges and universities, and the associations listed below, we are writing in support of Congressional efforts to repeal Section 179(b) of the Deficit Reduction Act of 1984 (P.L. 98-369) relating to the new substantiation requirements for deductions attributable to business use of passenger automobiles and certain other property. If Section 179(b) is not repealed, we urge Congress to direct the Internal Revenue Service to revise substantially their temporary and proposed regulations, which are excessively burdensome.

Colleges and universities, as tax-exempt organizations, do not claim deductions from taxes for business automobiles. Therefore, our primary concern is the record-keeping requirements imposed by the Service's regulations on individual taxpayers and the corresponding withholding requirements on higher education institutions as employers. The modifications of February 20, which allow institutions to forgo record-keeping in certain special situations, are not helpful since meeting the criteria for those situations is often as difficult as keeping the adequate contemporaneous records.

The Service's temporary and proposed regulations impose excessively burdensome recordkeeping requirements on the individual taxpayer who uses an employer-provided automobile. In order to relieve this burden, we recommend that the individual taxpayer have the option to use a daily "use rate" instead of the daily recordkeeping requirement for purposes of valuing the benefit in instances where one car is assigned to one person on an exclusive basis.

Secondly, we recommend that the employer not be required to withhold from an individual's salary or wages unless and until the value of the benefit of using an employer-provided automobile exceeds \$1,000. The administrative burden of withholding on amounts less than \$1,000 exceeds the value of collecting the tax in advance.

Finally, the law and the corresponding regulations should exempt from compliance college and university health, fire, and safety personnel who are on 24-hour call for campus emergencies and are therefore required to take campus vehicles home.

We ask that this letter be included in the record of the Ways and Means Committee hearing of March 5, 1985. I would be happy to respond to any questions you or your staff may have concerning our position.

This letter is sent on behalf of: American Association of Community and Junior College, American Association of State Colleges and Universities, American Council on Education, Association of American Colleges, Association of American Medical

Colleges, National Association of College and University Business Officers, National Association of State Universities and Land-Grant Colleges.

Sincerely,

ROBERT L. CARR,
Executive Vice President.

STATEMENT OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. Chairman and Members of the Committee, The National Association of Home Builders (NAHB), a trade association representing over 129,000 members, is pleased to submit a statement for the record, concerning the recordkeeping requirements for automobiles.

NAHB is very concerned with the contemporaneous recordkeeping requirements of the Deficit Reduction Act of 1984. Those requirements, coupled with the Treasury Regulations implementing those requirements, have created an administrative burden, which is costly and detracts from productive activity. Therefore, NAHB supports legislation introduced by Messrs. Anthony, Jones (of Oklahoma), Jenkins, Matsui, Flipppo, Frenzel, Campbell, and others, which would repeal Section 179(b) of the 1984 Act.

In general, the 1984 Act requires taxpayers to substantiate by adequate contemporaneous records any tax credit or deduction with respect to the business use of automobiles. No credit or deduction is allowed in the absence of such records. Specifically, taxpayers must keep contemporaneous logs recording the date of the trip and the mileage driven for business purposes.

The 1984 Act also requires tax return preparers to advise taxpayers of the contemporaneous recordkeeping requirements and to obtain written confirmation from the taxpayer certifying that adequate contemporaneous records exist. The return preparer is subject to a penalty if he or she does not obtain such written certification.

Under the law prior to the 1984 Act, taxpayers were required to substantiate any deductions for travel expenses by adequate records or other evidence corroborating their own statements. These records, which did not have to be contemporaneous, were required to show the amount, time, place, and business purpose of the expense.

Temporary Treasury Regulations, implementing the recordkeeping requirements, were first issued on October 15, 1984. In part, these regulations require taxpayers to maintain logs or diaries for the purpose of detailing the business use of automobiles. Specifically, the following information must be logged:

- (1) The name of the user of the vehicle;
- (2) The purpose of the use;
- (3) The date of use of the property; and
- (4) The number of miles and/or the amount of time the property was used.

What these regulations mean to our industry, and to businesses in general, is an inordinate amount of paperwork. Essentially, it means that time that could be going into productive activities will have to be channelled into more paperwork.

While we do not yet have hard data concerning the additional costs that have been imposed upon our industry as a result of the auto recordkeeping requirement, the following excerpt from a letter we received from a home builder is illustrative of the types of problems of which we are aware:

"Since all pickup trucks are included, we find that we must keep a log record on four autos, eight pickups and two vans. We estimate that it will take a person at least one full hour of time per week to record off and on trips for his job. Assuming an average man being paid \$10.00 per hour (some do receive more), this will mean that our costs will rise \$140 per week or \$606.00 per month (4½ weeks in a month) which totals \$7,272.00 additional costs per year for this extra record keeping."

To illustrate the problem, further, assume the case of a builder who has several projects underway at one time (or who has several houses under construction within one project). Each time the builder gets in an auto to go from one site to another, he must log in the use of the auto. In addition, take the case of all the individuals allied with the building trades, for example, flooring and lighting contractors, or architects. Each time these people use their autos to go from one site to another, which often may be several times a day, they must take the time to log in their automobile use. We feel that these people can use their time more valuably in a capacity other than as policemen for the I.R.S.

Another situation that concerns us is the case where a builder, for security reasons, has an employee drive his truck home at night. That employee is deemed to

have commuting income, even though the only reason he took the truck home was for a valid security purpose.

Finally, we wonder what purpose all of these automobile logs ultimately will serve. If all individuals and businesses were audited, it might make sense to require such recordkeeping. However, in a world in which fewer than 5 percent of taxpayers are audited in any given year, we wonder how the IRS is going to make use of all this information. Does it make sense to tell people that they are going to have to keep logs, and store these logs for the statutory period of limitations (generally, three years), when it is highly unlikely that the I.R.S. will ever make use of that information?

Apparently, the Treasury and I.R.S. were concerned that taxpayers were cheating when they deducted expenses connected with the business use of autos. We have not seen any hard data concerning the number of tax cheaters, but even assuming it is as high as 10 percent, would it make sense to burden the large majority of honest taxpayers to catch the small minority who cheat? Rather than enhancing compliance, overly burdensome recordkeeping requirements could cause otherwise honest taxpayers to drop out of the system.

We at NAHB believe our tax system has survived so well over the years primarily because it has been grounded on the concept of voluntary, self-assessment. Why should we now turn our backs on a system that has stood the test of time?

On February 15, 1985, the IRS issued a new set of temporary regulations that modified, in certain respects, the initial temporary regulations that were issued on October 15, 1985. One of the provisions of interest to NAHB concerns vehicles used only for business purposes. Pursuant to the additional temporary regulations, an employer may treat 100 percent of an employee's use of an automobile or other road vehicle as business use, without satisfying the otherwise applicable requirements for substantiation by adequate contemporaneous records, provided that certain conditions are met. Those conditions are as follows:

- (1) The vehicle owned or leased by the employer is provided to one or more employees for use in connection with the employer's trade or business;
- (2) When the vehicle is not being used for such business purposes, it is kept on the employer's business premises;
- (3) Under the employer's policy, no employee may use the vehicle for personal purposes, other than de minimis personal use;
- (4) The employer reasonably believes that no employee uses the vehicle, other than de minimis use, for any personal purpose; and
- (5) No employee using the vehicle lives at the employer's business premises.

It is the second condition that troubles us because, as noted above, an employer may ask an employee to drive the vehicle home at night for legitimate security reasons. For example, the construction site often is not a safe place to store vehicles at night, unless the employer expends substantial amounts for security.

The IRS is to be congratulated for issuing additional temporary regulations because, in doing so, it has recognized the extreme burdens imposed by the initial temporary regulations. However, we do not believe that the additional temporary regulations have alleviated the problems caused by Section 179(b) of the 1984 Act.

In conclusion, the National Association of Home Builders urges the Congress to act promptly to repeal the contemporaneous recordkeeping requirements of the 1984 Act. We appreciate the opportunity to submit our views and applaud the Committee on Ways and Means for holding a hearing on this troublesome issue.

NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS,
Falls Church, VA, March 4, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, Longworth Building, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As a member of the Associated Specialty Contractors, the National Association of Plumbing-Heating-Cooling Contractors fully supports the statement presented by ASC for the March 5 hearing calling for the repeal of recordkeeping and the taxation of vehicle requirements. Trucks, vans and other vehicles are provided to employees for bona fide business purposes. Among those are requirements that the vehicles be used for commuting (1) to make the vehicle readily available for emergency service calls, (2) to provide secure storage, (3) to relieve the contractor of providing storage space, and (4) to increase productivity. We concur that the recordkeeping and the taxation of these uses is outrageous and should be repealed. On February 8, 1985, we testified to the House Small Business Committee's Subcommittee on Tax, Access to Equity Capital and Business Opportunities de-

scribing our concerns. We understand that that hearing record will be submitted for consideration of your committee.

The National Association of Plumbing-Heating-Cooling Contractors is the oldest national association in the construction industry and the largest in the plumbing-heating-cooling industry. It has approximately 6,500 members. Membership comes from every state in the country and is organized through about 300 state and local affiliated associations. This industry employs over 400,000 people and has receipts of 21 billion dollars.

Enclosed is our position paper on the issue. We ask that this letter and our position paper be included in the public record of the hearing.

Sincerely,

DENNIS LAVALLEE, CAE,
Director of Government Affairs.

Enclosure.

POSITION PAPER—TAXATION OF VEHICLES

POSITION

NAPHCC opposes the outrageous requirement for keeping contemporaneous records of the use of trucks, vans, cars, and other company owned vehicles and equipment.

Prompt action is needed by the Congress to repeal the sections of the Internal Revenue Code which impose such unwarranted taxes and recordkeeping.

BACKGROUND

Congress passed the Tax Reform Act of 1984 which requires massive recordkeeping for cars, service trucks and other vehicles to verify tax deductions for business use.

The law also requires taxing employees for commuting use of vehicles even when the vehicles are taken home for the convenience of the employer, such as to be readily available for emergency calls, for security, etc. Alternatively, the contractor can forego a portion of investment tax credit and depreciation.

These create tremendous undue hardship on employees and employers in requiring the keeping of logs, and tabulating records for taxes on so-called personal use, which actually is legitimate business use.

STATEMENT OF DAVID L. REAM, CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE, NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS

The following statement is submitted by the National Association of Professional Insurance Agents (PIA) to the House Committee on Ways and Means. PIA is a national trade association representing more than 40,000 independent property and casualty insurance agents in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.

PIA would like to take this opportunity to thank the distinguished Chairman and Members of the Ways and Means Committee for providing us and other concerned citizens with an opportunity to comment on the Treasury Department's revised temporary and proposed regulations relating to the recordkeeping requirements for automobiles and certain other property.

Chairman Rostenkowski (D-IL) correctly stated in announcing this hearing that, "considerable controversy has arisen in response to the Treasury Department's proposed regulations implementing the new recordkeeping requirements for automobiles and other vehicles." It is, indeed, encouraging that the Committee is responding to the rising tide of public protest on this issue and providing an appropriate forum for concerned taxpayers to express their opposition. The growing volume of citizen complaints is a clear indication that a very sensitive public nerve has been bruised by the Government's treatment of this issue.

There are a multitude of taxpayers and small businesses that use vehicles and other types of property that they own for both commercial and personal purposes and they have done so for many years. The use of the same automobile for both business and personal activities is probably the most common situation. This is especially true in terms of the independent insurance agents that are members of PIA. Under the prior treatment of Section 274(d) of the Internal Revenue Code (IRC), our members could claim business deductions for business-related travel costs involving their automobiles and for other business related expenses involving certain types of

property. These deductions were legitimate as long as they could be substantiated by reasonable records that reconstructed the amount, time, place, and business purposes of the claimed expenses. This substantiation included weekly records or those reconstructed later at a more convenient point in time. They need only adequately show a proper business use of the property.

In the search for a downpayment to provide additional funds to help balance the budget, Congress enacted the Deficit Reduction Act of 1984, PL 98-369. Section 179 of that Act changed the aforementioned reasonable recordkeeping treatment for automobile usage and other property that are used for both business and personal purposes. This new law requires taxpayers to prepare and maintain detailed contemporaneous records to substantiate any claimed business deductions for use of motor vehicles; property for entertainment, recreation or amusement; computers; gifts and the business use of other property listed in IRS Regulations that would subsequently be prepared. These new recordkeeping/reporting requirements would be effective for 1985 and following tax years.

Section 179 appears to have been one of those unnoticed provisions in a 700+ page tax bill that slipped by everyone when the legislation was being considered before the Ways and Means and Finance Committees. In any event, it was at that point in time an unknown quantity in terms of public perception.

Then, on October 24, 1984, the Internal Revenue Service (IRS) promulgated temporary regulations implementing Section 179 in the Federal Register (49 Fed Reg 42701 (1984)). That document covered limitations placed on business cost recovery deductions and investment tax credits for passenger automobiles used in a trade or business or used for the production of income. It also contained limitations on deductions and investment tax credits for the use of certain listed properties and for taxpayers who leased "listed property." The document also contained regulations relating to substantiation requirements for listed property.

The current controversy centers around Section 1.274-5T of the temporary regulations which stated that "... no deduction or credit shall be allowed with respect to the use of any listed property . . . unless the taxpayer substantiates such use by adequate contemporaneous records. . . ." The "adequate contemporaneous record" requirement could be satisfied *only* by keeping a log, journal, diary or similar record. The taxpayer must make a separate entry in the record form he uses for each use of the listed property that specifies the date, name of user, number of miles driven in the case of vehicles or the amount of time utilized for other listed properties, and the purpose of the use of the property. Such entries into the records must be made at or near the time the listed property was actually used for business purposes. The details of the temporary regulation's recordkeeping requirements covered 15 pages of fine print.

As PIA's membership began to realize the implications of these regulations, along with other taxpayers, the adverse response soon developed into a spontaneous grass roots lobbying campaign seeking relief from the Congress. Members of Congress began to receive a barrage of angry constituent letters and telephone calls. By any objective analysis, these temporary regulations were not well received by those who would be affected because they would create an extremely burdensome set of rules which would prove very difficult for small business persons to comply with. They set forth an unnecessary redtape and paperwork mandate that appears to go far beyond any reasonable tax compliance requirements. This paperwork quagmire is a totally unreasonable burden upon independent insurance agents that use their automobiles for business purposes.

The public outcry against the Section 179 regulations apparently caused the IRS to reflect upon its handiwork and reach the conclusion that something about their October 1984 rule promulgation was not well received. Consequently, on February 20, 1985, the IRS promulgated another set of temporary regulations providing an additional nine pages of fine print to revise the previous set of temporary regulations implementing Section 179.

In all candor, the February 20, 1985 edition, while somewhat less burdensome to independent insurance agents than its October 24, 1984 predecessor is still unacceptable. The latest version would also impose an unwarranted, unnecessary and wasteful paperwork compliance burden on small businesses and their employees.

After carefully evaluating the situation created by Section 179 and the controversial IRS regulations that implement this provision, PIA has reached the conclusion that the only acceptable solution is the repeal of Section 179 and the withdrawal of its implementing regulations.

STATEMENT OF THE NATIONAL ASSOCIATION OF REALTORS

INTRODUCTION

These comments are presented on behalf of the National Association of Realtors. The National Association of Realtors represents more than 670,000 individuals engaged in all facets of the real estate industry. The type of business we are in—property sales, development, appraisal and management—demands extensive business use of our automobiles. We, therefore, commend the Chairmen for holding these important hearings and for the opportunity to present our views regarding the overly burdensome, time-consuming Internal Revenue Service (IRS) regulations which require contemporaneous record keeping for automobile business use.

RECOMMENDATION

Mr. Chairman, the National Association of Realtors supports the intent of the Deficit Reduction Act of 1984 to eliminate tax abuse relating to business vehicles. We questioned, as did many organizations appearing here today, the appropriateness of limiting business tax breaks for so-called "luxury" automobiles. However, we did not oppose the 50 percent business use threshold which must be met to qualify for depreciation under the ACRS rules and the 10 percent investment tax credit. Most would agree that these rules, while themselves objectionable, would be sufficient to limit any excessive automobile tax breaks. This proved not to be the thinking at the time and Congress, without the benefit of holding hearings, determined in conference on the Deficit Reduction Act that new rules to substantiate business use were necessary.

The National Association of Realtors strongly objects to those provisions of the Deficit Reduction Act which altered the substantiation requirements for claiming a business use automobile tax benefit and provided authority to the Internal Revenue Service (IRS) to define, by regulation the new standard—"adequate contemporaneous record keeping." Therefore, we strongly urge that Congress act immediately to repeal section 274(d) of the Internal Revenue Code which contains the "adequate contemporaneous record keeping" language that is the impetus for these regulations.

Although the IRS recently has revised its original regulations to provide some exceptions to record keeping for certain taxpayers, the regulations remain complex, time-consuming, costly and ambiguous. Time is money in real estate, as in all business, and these new record keeping requirements unnecessarily infringe upon productive business time. The National Association of Realtors believes that repeal of the adequate contemporaneous record keeping rules will not result in tax cheating. In fact, we believe just the opposite. Retention of the contemporaneous record keeping requirements will encourage tax abuse, further undermine American taxpayer moral and result in greater taxpayer confusion and non-compliance.

Repeal of the new rules could allow us to revert to the prior law "reasonable reconstruction" standard for reporting and claiming automobile business use tax benefits. This standard is far less onerous than the "adequate contemporaneous" standard and is more workable in the everyday business environment.

IMPACT OF THE REGULATIONS

On October 24, 1984, the Department of Treasury and the Internal Revenue Service (IRS) issued proposed and temporary regulations specifically describing what documentation the taxpayer must be prepared to provide to the IRS in order to be able to claim business use of a vehicle. The new regulations stated that a taxpayer must maintain a daily log detailing the business use of a vehicle. The following information was required by these regulations to be entered into the log at the time of use of the vehicle:

1. The date and the use of the property;
2. The name of the user of the property;
3. The number of miles or the amount of time the property was used; and
4. The purpose of the use.

With increasing frequency, the small businessman is being forced to comply with well-intended regulations which in practice result in wasted time and energy. This IRS regulation proved no exception.

Not surprisingly, these regulations were met with strenuous disapproval. On February 21, 1985, the IRS published revised regulations that provided four exceptions to the record keeping rules for certain restricted business use. While these modifica-

tions are helpful on one hand, on the other hand they only add another layer of confusion and uncertainty in day-to-day business life.

One exception provided in the new regulations appears to apply to certain members of the real estate industry. The exception is clearly not broad enough nor is it sufficient for those taxpayers within its narrow boundaries. The exception provides that if an employee (or self employed taxpayer) spends "most of the business day" using a vehicle for business purposes, he need not keep records of his use and may treat 70 percent of the vehicle use as business and 30 percent as personal. The regulations note that this exception will not be available to persons who generally spend their day in the office.

The "most of the business day" standard is ambiguous and adds to the complexity and difficulty of complying with the new regulations. Does "most of the business day" mean more than half, almost all, somewhat less than all? The regulations do not provide an answer. It is simply unfair to expect business persons to take on these added record keeping requirements and try to interpret what the IRS regulations actually mean.

A realtor may use his car enough to fulfill the "most of the business day" requirement one day but not the next. Even so, when the vehicle is used it is used predominately for business purposes. Consider the following: a realtor usually begins his day in the office spending anywhere from two to four hours contacting clients, checking property listings and arranging property tours. He may then use his car to conduct up to twelve property showings to clients and a varying number of property inspection trips or "cold client calls. The trips may be successive and take the entire business day or they may be at intervals that require the realtor to return to the office to make productive use of his time. With business days varying as much as this it is difficult to determine exactly what record keeping is required.

Confusion is likely to create non-compliance and some over-compliance. At the beginning of a workday, a realtor may not know if his car use will fulfill the "most of the business day" exception or not. Unsure, he might estimate that he will meet this standard and not keep a log. Or, more likely, he might assume he won't meet the exception criteria and keep contemporaneous records in a number of cases when his use would fulfill the exception. This overcompliance is an additional cost to the realtor.

Proper compliance would be a costly enough burden. A realtor whose day required him to make significant business use of his car, yet still did not meet the "most of the business day" exception, may have as many as ten to fifteen trips to log. This could easily amount to fifteen minutes of unproductive business time each day. The cost of this unproductive time to a taxpayer over the course of a year would be significant.

For instance, fifteen minutes of record keeping per day translates into seventy-eight hours of record keeping per year. The cost of compliance with these rules to our membership is \$472 million—all for a revenue savings of \$150 million from the entire business community. These cost figures would be reduced by the number of taxpayers who definitely know they met the "most of the business day" standard allowing 70 percent of total use as business cost.

A number of realtors which we have surveyed use their cars for business more than 70 percent of the time. In order to deduct this additional amount, the realtor (if within the "most of the business day" exception) must keep contemporaneous records of this personal use of the car. This defeats the purpose of an exception to the record keeping requirements. The simple solution—repeal the contemporaneous record keeping requirements and return to prior law.

CONCLUSION

National Association of Realtors supports repeal of the "adequate contemporaneous record" language in the tax code. The IRS regulations issued to administer this code section have caused increased cost, ambiguity and complexity in the auto use record keeping requirements. These results certainly were not intended by Congress. The IRS regulations seek to make business-persons its record keepers and tax auditors. Americans cannot remain productive if we must generate paperwork on every facet of our activities.

The regulations promote inefficient use of time, which results in a waste of business resources. Such waste is not justified by an estimated \$150 million in additional Treasury revenues. Furthermore, these record keeping requirements run contrary to the principles that this Administration espouses on less government intrusion in the affairs of business. They also contradict of Administration's position on tax reform and tax simplicity.

On behalf of the National Association of Realtors, we respectfully urge the repeal of the "adequate contemporaneous record keeping" requirements.

STATEMENT OF JOHN M. RECTOR, DIRECTOR OF GOVERNMENT AFFAIRS, THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS

Mr. Chairman Rostenkowski, Members of the committee, I am John M. Rector, I serve as the Director of Government Affairs of the National Association of Retail Druggists.

The National Association of Retail Druggists (NARD) represents owners of more than 30,000 independent pharmacies, where over 75,000 pharmacists dispense more than 70 percent of the nation's prescription drugs. Together, they serve 18 million persons daily and provide nearly 90 percent of the Medicaid pharmaceutical services. More than 60 percent of NARD members are currently in the Home Health Care business.

NARD members are primarily family businesses. They have roots in America's communities. The neighborhood independent druggist typifies the reliability, stability, yet adventuresomeness that has made our country great.

We are pleased to appear before the Committee to express our strong endorsement of H.R. 531, H.R. 600, and the numerous other bills which would repeal Section 179 (b) and (c) of the Tax Reform Act of 1984 (Public Law 98-369). We would like to express our special appreciation to the Committee, its Chairman, and staff for the leadership that they are providing through this important and timely hearing.

The independent community pharmacist of today is simultaneously a health care professional and a small businessperson. NARD and its members vigorously support the American free enterprise system which provides the only meaningful climate under which a small business can economically survive, have the opportunity to succeed through personal efforts, and perform an important and essential service to the community.

Pharmacy is a highly regulated profession. In many instances, for public health protection, such controls are necessary. Much can be done, however, to reduce unnecessary government intervention in our marketplace.

Far too frequently, government at all levels—particularly the agencies and bureaus of the federal government—seem to ignore, either deliberately or inadvertently, or fail to consider adequately, the impact of their plans and programs on business.

The subject to today's hearing could serve as a prototype of excessive and burdensome government intervention. To report to the Committee that our members, be they owners, managers, or employees, are outraged by the requirement that taxpayers must maintain detailed excessive contemporaneous records for the business and personal use of automobiles and other vehicles in order to qualify for a business tax deduction or credit would be an understatement. They ask: Are these personally offensive restrictions, which pose a threat to privacy, part and parcel of an Orwellian agenda?

Do they realize that the paperwork associated with these requirements involves more expense than the value of the tax write-off?

These are among the more civil inquiries that we have received from our members across the country.

In the retail pharmacy business, vehicles are used for various purposes: the delivery of prescription drugs and other drug products; in providing services to nursing homes and hospices; in providing durable medical equipment and health supports and appliances, home respiratory and I.V. therapy; and the pick-up and delivery between pharmacies and between pharmacies and wholesalers.

The hallmark of the independent retail druggist is service and an essential aspect of such service is 24-hour availability for delivery of prescription drugs or other service which requires a visit to the patient's home or health facility. Thus, it is absolutely necessary that most employers and employees have access to company vehicles at all times.

We believe in paying our fair share of taxes. We also support however, the effort to simplify the tax code and make compliance less costly, especially for small business. In effect, the IRS, in an effort to identify a few individuals who stretched the law, are punishing the overwhelming majority of taxpayers who are law abiding. The real criminal will simply falsify entries or construct false books if they are ever required by the IRS to submit business records.

In summary, these onerous anti-business record keeping requirements will, in the long run, enhance a perception of unfairness towards our tax laws, which over time will reduce rather than increase tax compliance. In the spirit of mutual concern regarding the need to simplify tax law and procedures, Congress can clearly demonstrate its commitment to such goals by restoring the previous law which required business to maintain adequate records or other sufficient evidence to prove business use of vehicles.

On behalf of the Officers, Executive Committee and members of NARD, thank you for the opportunity to appear and to participate in the formulation of long overdue effort to simplify tax compliance.

THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Alexandria, VA, January 25, 1985.

Hon. BUDDY ROEMER,
House of Representatives, Cannon House Office Building, Washington, DC.

DEAR CONGRESSMAN ROEMER: The purpose of this correspondence is to express our support for your legislation, H.R. 600, which would repeal certain sections of the 1984 Tax Reform Act, which requires unnecessary and excessively burdensome detailed contemporaneous records regarding the business use of vehicles.

The National Association of Retail Druggists represents owners of 30,000 pharmacies where 75,000 pharmacists dispense more than 70% of the nation's prescription drugs.

Once again, our deepest appreciation to you and your colleagues who have supported H.R. 600.

Sincerely,

CHARLES M. WEST,
Executive Vice President.

THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Alexandria, VA, January 25, 1985.

Hon. BERYL ANTHONY, Jr.,
House of Representatives, Longworth House Office Building, Washington, DC.

DEAR CONGRESSMAN ANTHONY: The purpose of this correspondence is to express our support for your legislation, H.R. 531, which would repeal certain sections of the 1984 Tax Reform Act, which requires unnecessary and excessively burdensome detailed contemporaneous records regarding the business use of vehicles.

The National Association of Retail Druggists represents owners of 30,000 pharmacies where 75,000 pharmacists dispense more than 70% of the nation's prescription drugs.

Once again, our deepest appreciation to you and your colleagues who have supported H.R. 531.

Sincerely,

CHARLES M. WEST,
Executive Vice President.

THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS,
Bellevue, NE, January 11, 1985.

Re. 1984 Tax Reform Act section 179, paragraph B2, B3, and C2.

Hon HAL DAUB,
House of Representatives, Longworth Office Building, Washington, DC.

DEAR HAL: This regulation places an enormous burden on small businesses such as mine and is totally unacceptable. Keeping a log of my deliveries in the car is ridiculous.

My Pharmacy delivers prescriptions to anyone who requests delivery; however, it is primarily the Ill, Elderly and Medicaid recipients who I am asked to serve. I use high school students to deliver, which, by the way, gives them a job, but when you understand that we make from ten to thirty stops during a single delivery time you can imagine what a time consuming operation the logging of all this would mean. After all, Delivery from Johnson's is a free service to the Prescription Customer. How much would I have to increase the charge to stay even?

The delivery car sits in front of my store all the time, so that anyone can see it. I use my own car for myself.

It's regulations like this that have to be stopped so that the small business community can continue to employ more people and serve the Poor, Elderly and Helpless. DON'T let the IRS penalize us because they can't do their job and catch the offenders.

Please see that this regulation is rescinded at once.

Yours very truly,

JOHN A. JOHNSON, P.D.,
Past President.

[An attachment from the September 1983 NARD Journal has been retained in the committee files.]

STATEMENT OF THE NATIONAL ASSOCIATION OF TOBACCO DISTRIBUTORS

The National Association of Tobacco Distributors (NATD) represents over 570 wholesale distributors of candy, tobacco and numerous other products. Through 740 distribution centers, our members supply approximately 1.5 million retail outlets. The NATD members are owners of fleets of vehicles used to ship products, 94.5% of which are trucks and 5.5% of which are other types of vehicles such as station wagons. The average NATD member operates approximately 16 vehicles, and about 60% of these vehicles are under 12,000 average gross weight.

While the regulations issued by the Treasury Department on February 20, 1985 are in improvement over those issued on October 28, 1984; they are still complicated and do not provide relief for small businesses. In many cases, the distributor's employees may make small deliveries using "personal automobiles" owned and operated by the business. In a record keeping-intensive industry, the last thing we need are more detailed, burdensome record keeping requirements.

Section 1.274-6T(c) of the February 20th regulations states that a vehicle "must be kept on the employer's business premises". Moreover, Section 1.274-6T(d) is not available for an employee who is "an officer or a one-percent owner of the employer", and many distributors are full or part owners of their small businesses. None of the regulations help ease the record keeping burden of the small, independent business person who is both employer and employee. The Congress should either force the Treasury Department to ease its burdensome record keeping requirements, or should repeal the "contemporaneous" language in 26 USC 274(d)(4).

STATEMENT OF DONALD W. CARLSON ON BEHALF OF THE NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS

SUMMARY

The "adequate contemporaneous" recordkeeping requirements for mixed use property proposed by the IRS, together with the related valuation regulations, raise a host of practical impediments to compliance for affected taxpayers which bespeak a failure by the IRS to comprehend the realities of everyday business activity. The IRS's newly-modified regulations, while a small step in the right direction, substantially fail to resolve the problems associated with the contemporaneous recordkeeping requirements.

The regulatory scheme envisioned by the IRS is simply not administrable in a practical sense. An objective, common sense examination of that regulatory scheme in terms of the overall cost of compliance relative to the amount of revenue, if any, to be gained by the government demonstrates that remedial legislation is required.

A number of problems flaw the IRS approach. For instance, the regulations coverage of vehicles is overbroad. Vans and light duty trucks should not be generally covered given their real-world use and the legislative history and intent on Congress in passing section 179 of the Tax Reform Act of 1984.

In addition, the exemptions from the contemporaneous recordkeeping requirements are arbitrary and too-narrowly drawn. Whole segments of affected taxpayers unjustifiably receive little or no relief because, among other things, the safe harbor for "sales/service" personnel is discriminatory in application and fails to extend to the very taxpayers who use their vehicles for business purposes the most.

Finally, NAW believes that the administrability of the recordkeeping requirements is inextricably tied to the administrability of the valuation and reporting/withholding regulations and that Congress should deal with the latter at the same time it deals with the former. Areas in which the IRS may particularly require legislative guidance include the best methods for valuing the personal use of a vehicle (a standard mileage inclusion in our opinion) and, whether all community should be a taxable fringe benefit.

I. INTRODUCTION

My name is Donald W. Carlson. I am President of Carlson Systems, a wholesaler-distributor of fastening, packaging, and materials handling products which employs approximately 260 people. Carlson Systems is based in Omaha, Nebraska, but has 25 branch and servicecenter locations in 15 states west of the Mississippi River. My company's sales, service, and support personnel use approximately 125 cars, vans and trucks to carry on our business.

Carlson Systems is a member of the National Association of Wholesaler-Distributors (NAW) and I am submitting this testimony today along with Nicholas E. Calio, NAW's Vice President—Government Relations, on behalf of NAW and all of its members.

The National Association of Wholesaler-Distributors is a federation of 118 national (list attached) and 50 state and regional trade associations as well as 6,000 individual wholesale-distribution companies. All told, NAW's membership collectively includes some 45,000 companies and 150,000 places of business across the country.

NAW's membership is dominated by small business and is responsible for over 60 percent of the \$1.4 trillion of merchandise which flows through wholesale channels annually. NAW members also employ a comparable percentage, or 3 million, of the 5 million Americans who work in the wholesale distribution trade.

According to the most recent figures available from the Internal Revenue Service, corporate wholesale distribution firms had pre-tax profits of \$18.6 billion and paid \$7.3 billion in taxes. Furthermore, the annual study of effective corporate tax rates by the Joint Committee on Taxation has consistently shown that the industry pays an effective tax rate of approximately 35 percent.

Like my company, other NAW member companies employ executive, management, sales, and service personnel who require and use many company cars to carry on their business. In addition, many of the member companies have need for and make use of light trucks and vans. Given the size and the nature of wholesale distribution businesses, the IRS regulations on auto recordkeeping and fringe benefit valuation, and the paperwork nightmare they create, have a direct and substantial impact on the way NAW members conduct their business.

II. GENERAL COMMENTS ABOUT THE REGULATIONS AND A SUGGESTED APPROACH TO RESOLVING THE PROBLEMS THEY CREATE

It is inevitable that bad law will produce bad implementing regulations and, to be fair, Congress left the IRS holding the proverbial "bag" in this case. Still, even accounting for the over-board and ill-considered nature of section 179 of the Tax Reform Act of 1984, the proposed recordkeeping regulations, even as modified by the IRS, are at once needlessly burdensome, far-reaching, and complex.

The "adequate contemporaneous" recordkeeping requirements, together with the related valuation regulations, raise a host of practical impediments to compliance for affected taxpayers which bespeak a failure by IRS to comprehend the realities of everyday business activity. In examining—and hopefully resolving—these problems, we believe this Committee and the Congress must step back and take a long, hard, common sense look at the situation in terms of the overall costs of compliance relative to the amount of revenue, if any, to be gained by the government.

The key to resolving this controversy is that any solution must be administrable in practical sense in order to work. Otherwise, the IRS and Congress are regulating for regulation's sake at great cost to the affected businesses and, perhaps, to the government as well as we will discuss below.

I believe it would be instructive for all members of Congress to personally sit down and attempt to wade through the original and the modified regulations promulgated by the IRS. Such an exercise would provide the perspective necessary to understand the frustrations faced by businessmen and women in dealing with these rules. An objective examination of the IRS pronouncements demonstrates that both compliance and enforcement will be difficult and that the regulations fail to provide guidance on an array of critical compliance matters. In fact, the regulations raise and leave open far more questions than they answer.

III. SOME SPECIFIC PROBLEMS WITH THE RECORDKEEPING REGULATIONS

A. *The regulations coverage of vehicles is overbroad*

The newly-proposed IRS regulations, like those issued in October, 1984, request comment on the types of van or trucks that should be excluded from the definition of "passenger automobile".

Light duty trucks, vans, and other utilitarian vehicles should be excluded from the final regulations consistent with the legislative intent and history of section 179 of the Tax Reform Act of 1984. Section 179 was intended by Congress to rectify a perceived abuse of the tax system—taxpayers subsidizing the purchase of “luxury” cars through the tax code. Clearly, few light trucks, vans or other utility vehicles fall within the rubric of “luxury” cars, at least as the terms are understood and such vehicles are used within the wholesale distribution industry.

Failure to exempt such vehicles from the scope of the law imposes an extremely onerous, impractical and unnecessary compliance burden on affected businesses for reasons which have nothing to do with the logic of the law. For instance, many vans and light duty trucks bear a company logo and are used for sales and service calls, errands, deliveries, and other, similar purposes. Whether or not the vehicles have logos, however, they are purchased and used because of characteristics which have nothing to do with the abuse section 179 was intended to correct.

Many of my employees provide a typical industry example; they are assigned company vehicles since they need to carry items such as construction staplers and nailers, steel strapping, and air compressors with them to adequately perform their sales and service functions. These vehicles are hardly the type that employees want to use for social purposes, as you might guess.

Hence, vans and light trucks should be specifically excluded as a matter of course from the recordkeeping requirements unless they are of a type that are clearly intended for personal use. It simply makes no sense to include business-oriented vans and trucks within the rules generally in order to get at the relatively few taxpayers who modify and use such vehicles for personal purposes.

B. The exemptions from the contemporaneous recordkeeping requirements are arbitrary and too narrowly drawn

The exemptions from the contemporaneous recordkeeping requirements in the newly-proposed IRS regulations are arbitrary and too narrowly drawn. While the IRS' recent modifications may be viewed as a step in the right direction by some, they fail in all substantial respects in NAW's view to resolve the problems associated with the contemporaneous recordkeeping requirements. Hence, we believe that the “contemporaneous” requirement should be repealed for all taxpayers across-the-board.

In saying this, we acknowledge that abuses existed under prior law. Nonetheless, it must also be recognized that the vast majority of taxpayers affected by the new regulations have been accounting for the use of their company cars in a satisfactory manner under current auditing standards. As one NAW member from California wrote to his Congressman and Senators:

“I am an employer of 28 good people engaged in the sale and distribution of welding equipment and industrial supplies. As such, we own five company cars and also compensate five additional people on a monthly basis for the business use of their vehicles. We have never abused this legitimate business expense and have, as a matter of fact, had three IRS audits since I have been at the head of this firm (1964). I am pleased to say not one dollar has resulted on either side due to these audits.”

In short, the new and additional recordkeeping requirements now imposed for the use of a company-owned or leased vehicle are unnecessary and overly-harsh for the majority of taxpayers and will have a negative impact on their business performance and personal productivity. Small businesses like those that comprise the NAW membership simply cannot afford these additional government-imposed paperwork regulations if they are to maintain a competitive position in the marketplace.

While the various exclusions and safe harbors from contemporaneous recordkeeping recently promulgated by IRS may be helpful to narrow constituencies, they have little or no impact on whole segments of affected taxpayers including me, my employees, most NAW members and their employees, and many other small businessmen.

Take the “sales/service” safe harbor, for instance. It permits taxpayers who spend most of their day in their car making sales or service calls to keep no records and to treat 70 percent of the use of the car as business use and 30 percent as personal use. However, the safe harbor is not available to taxpayers who spend a substantial portion of their day in the office or who divide their time between the office and other locations. In practical terms, the safe harbor exemption therefore discriminates against taxpayers who use their vehicle 70 percent or more of the time for business, but who are also required to perform office duties.

It also blatantly discriminates against the owners and officers of companies like mine who, I must tell you contrary to the Treasury Department's apparent opinion,

take a "hands-on" approach to running the business. At my company, the officers and managers from my brother and myself on down are active in sales and marketing and in running the branch locations and service centers. In many cases, for example, we will make actual sales calls; in others we will meet with sales personnel for the calls.

The most ludicrous aspect of the safe harbor is that otherwise eligible taxpayers who use their vehicle 70 percent or more of the time for business must either keep contemporaneous records and, in the case of the employee, impute "income" never received or, in the case of the employer, give up ITC and ACRS benefits to which they are entitled.

While the IRS has indicated that it "is considering an alternative method for the employer to satisfy its 'adequate contemporaneous record' requirement" in lieu of the 70 percent/30 percent safe harbor (by establishing different percentages for direct use through representative sampling of company cars), the limitations which the Service places on this potentially corrective measure fundamentally flaw it. The proposed regulations appear to make the alternative available only to employers with large vehicle fleets which contain classes of 100 or more physically similar, similarly-used vehicles. Clearly, this alternative offers no relief to the vast numbers of small businesses who are so substantially affected by these regulations—and these are the businesses that can least afford the costs associated with the unrealistic requirements currently proposed by the IRS.

In my own company's case, an analysis of our salesmen's January logs shows personal use ranging from 1 to 16 percent. Yet, it seems unlikely that we would be able to establish an alternative safe harbor since our fleet, while large by relative standards in our industry, does not contain classes of vehicles in the numbers envisioned by the IRS to validate the sample.

The limitation is artificial and arbitrary. We question why a sample of a ten vehicle fleet used by a company would not serve the same purpose as a 100 vehicle fleet assuming that the vehicles were physically similar and similarly-used. In sum, the "relief" offered by the new regulations is little relief indeed.

C. Miscellaneous problems

There are numerous other significant administrability questions on which the regulations provide little or no guidance. To raise just a few, I would ask those who concocted the regulations how we are supposed to deal with circumstances regarding the frequent transferring of vehicles between individuals and between branch locations. Is the log supposed to go with the vehicle or with the individual? It would seem by implication that two logs really have to be kept. One log must stay with each vehicle and one log must be kept by each individual who's assigned any sort of company vehicle for any period of time during a year.

In like manner, how are we supposed to deal with switching of personnel between vehicles or how about moving a sales person from Omaha at some point during the year to Minnesota? I can assure you that we do transfer employees frequently and we do, of course transfer vehicles frequently.

Not only does this complicate the vehicle issue, but it also severely complicates our ability to properly report taxes to the states as well as the Federal government. The state of Minnesota certainly has different tax laws than the state of Nebraska. All told, these regulations are an administrative nightmare in practical terms.

IV. THE RELATED VALUATION AND REPORTING/WITHHOLDING PROBLEMS

These questions raised above underscore a point which I personally, and NAW institutionally, believe must be made to this Committee—that the administrability of the recordkeeping requirements is inextricably tied to the administrability of the valuation and reporting/withholding regulations and that this Committee should deal with the latter at the same time it deals with the former. Hence, while the focus of this hearing is on recordkeeping per se, we would like to briefly examine some of the valuation problems.

I emphasize at the outset that NAW is not saying that the reporting of income and withholding on it are the problem. The problem, again, lies in the administrability of what is being proposed.

It seems to us that the Congress and the IRS can approach this matter in two ways. You can construct a system which seeks arithmetical accuracy and every available tax dollar by attempting to cover every conceivable variation in the "actual" value of the benefit. The result of this choice, in our opinion, will be complexity, little guidance, substantial burdens and cost on business and, in the end, precious little in the way of new government revenue.

On the other hand, you can construct a system which sacrifices mathematical precision for simplicity. In this case, you get a system which is hopefully administrable, encourages compliance, and, critically, raises more revenue than it costs in compliance.

If this Committee or the IRS fails to adequately account for the costs of compliance, it will be robbing Peter to pay Paul. The compliance problems discussed both above and below engender significant costs to small and large businesses. While we have to pay those costs, they are business expense deductions which lower our tax payments. The result is an inefficient and uneconomic use of our capital which may concomitantly reduce government revenue.

That being said, we believe that Congress should provide the IRS guidance on the valuation of employer-provided automobiles (and other fringe benefits). It should be made clear, for instance, that employees who secure vehicles in the evening are fulfilling employment responsibility. Therefore, they should not be taxed on such activity despite the IRS' assertion that *all* commuting in a company vehicle is a taxable non-cash fringe benefit.

In addition, the fringe benefit rules should be modified to provide an alternative standard beyond the annual lease value for valuing the personal use of a vehicle. The annual lease value standard will be complex and difficult to administer in many cases, especially when large numbers of vehicles are involved. Hence, a simple alternative is in order.

The National Association of Wholesaler-Distributors believes that the best method for determining the amount of income to be reported by an employee using a company car is a straightforward mileage inclusion like the standard 20.5 cents deduction currently permitted by IRS as the deduction for business mileage. That the 20.5 cent benchmark would be the appropriate measure of income inclusion seems unavailable if it is, in fact, the appropriate measure for deductions permitted for business use of a personally-owned automobile.

A single standard mileage rate might result in either undervaluing or overvaluing the benefit of personal use of some cars. Nonetheless, a standard mileage inclusion figure is superior and preferable to any more sophisticated approach which might be advanced. When the real-world complications arising from the reporting and withholding aspects of these regulations are confronted, the enormity of the analytical work and the administrative reporting burden imposed on taxpayers become apparent. While the standard mileage inclusion does not eliminate all of the attendant problems, it does substantially ameliorate them.

V. CONCLUSION

This issue has already occupied too much of the productive time of the Congress, businessmen, and their employees. Rather than create a continuing merry-go-round of IRS pronouncements followed by public comment and outrage, Congress should repeal the contemporaneous recordkeeping requirements for all taxpayers for the business use of automobiles and other property and should also act to lend some practicality to the rules on valuation and reporting of, and withholding on, fringe benefits.

I want to thank the members of the Committee again for the opportunity to present this testimony today on behalf of the National Association of Wholesaler-Distributors.

NATIONAL CABLE TELEVISION ASSOCIATION,
Washington, DC, March 5, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Longworth Building, Washington, DC.

DEAR MR. CHAIRMAN: The National Cable Television Association, Inc. (NCTA) is the principal national trade association representing cable television system operators in the United States. Its members operate more than 2,000 cable systems nationwide. NCTA's members will be directly affected by the above-referenced revised interim income tax regulations promulgated by the Internal Revenue Service (IRS). NCTA thus submits this written statement for the printed record of the hearing which sets forth its views on certain of the revised interim rules.

NCTA applauds the IRS's recent amendments to the temporary regulations in sections 274 and 280F of the Internal Revenue Code (Code). 50 Fed. Reg. 7,071 (Feb. 20, 1985), amending regulations published in 49 Fed. Reg. 42,743 (Oct. 24, 1984). The new special rules eliminating or reducing the recordkeeping required to satisfy sec-

tion 274(d)(4) of the Code are a welcome step in the right direction. But while these revisions will help to ease the onerous paperwork burdens imposed by the IRS regulations, they do not go far enough. Specifically, NCTA questions the requirement that any use of a commercial vehicle for commuting purposes must involve the assessment of imputed income.

Under section 1.274-6T(2)(vii) of the revised temporary regulations, imputed income must be assessed against employees who use business vehicles for commuting purposes when the use is solely at the employer's request. NCTA supports adoption of the regulations' special rule that eliminates the recordkeeping requirement for vehicles used in this manner; and we can agree with the requirement that the employer should allow no other personal use of the vehicle by employees (other than de minimis personal use). See Sec. 1.274-6T(2). The employer should not in every case, however, have to assess income to the employee for each day the vehicle is used for commuting. In the cable industry, many companies require certain workers as a condition of employment to keep company trucks or vans continually available for emergency use. But the temporary regulations fail altogether to account for instances in which the commercial vehicle, while used for travel to and from an employee's residence, remains on-call, as does the employee, at the employer's behest. We submit that the imputing of income to employees for the use of business vehicles in these circumstances is clearly unfair and unwarranted.

A brief explanation of the nature of the cable industry and the kinds of vehicles and activities that are involved here will plainly demonstrate why an exception to the imputed income requirement should be granted. A cable television system is a facility which delivers electronic entertainment and information to subscribing households via coaxial cables strung along public streets and rights-of-way. There are more than 6,400 cable systems in the United States which pass almost 60 million homes with hundreds of thousands of miles of cable and other equipment. Nearly 35 million television households presently subscribe to cable on a monthly basis; by the end of 1985, the number of subscribers should exceed 40 million.

While cable in function and by statute is not a public utility, it can be compared to telephone, electricity and other utility services in the sense that it is provided to individual homes, and its customers expect and deserve uninterrupted service of high technical quality. In order to provide such service, cable operators in the local community must keep repair equipment available on a 24-hour, 7 days a week basis. Our industry knows only too well that people are intolerant of power outages and technical interference, particularly because, unlike free over-the-air broadcast signals, subscribers must pay a monthly fee for cable service. They want their cable service to work just like a light switch—when the TV set is turned on, they expect automatic service of perfect quality.

The only manner by which cable operators can maintain the capability to handle emergency repair calls is by requiring certain employees to assume off-hours responsibility on an on-call, standby basis. Most employees, however, are not given permanent use of a vehicle for commuting; rather, employees generally are assigned emergency night duty on a rotating basis. In order to restore service to subscribers as quickly as possible, employees typically will be required to take company equipped and owned vehicles to their residences, thereby maintaining their availability to handle emergency situations that may arise after regular business hours. The requirement may even be stipulated in employment or union contracts, or mandated by the local franchising authority. Most importantly, cable employees use company vehicles for commuting only when assigned such duty, and they are not used for personal purposes (other than the allowed de minimis use). When not required to use these vehicles for commuting, the employee will either use his own car or public transportation to travel to and from work, and can thus choose for himself what amount he wishes to spend in commuting costs.

The kinds of vehicles used for this purpose by the cable industry and the activities for which they must be made available further support an exemption from the imputed income requirement. First, most, if not all, of these vehicles bear a company logo and thus are clearly identifiable as commercial, not personal, vehicles. Second, they are generally vans and lightweight trucks, not automobiles. And while some of these vehicles may be used simply to provide a means of transportation to allow an employee to get to the site of an emergency, many others are outfitted with special equipment that may be needed for making the necessary repairs. These latter vehicles may contain equipment for, among other things, restoring power outages, climbing to power lines, testing individual subscriber hardware or general system plant, and replacing defective parts. It thus should be readily apparent that the commercial vehicles for which the cable industry seeks an exception are entirely

dissimilar from vehicles that a company may provide for commuting purposes purely as a benefit to the employee.

NCTA submits that there is a clear distinction between a car provided for the purpose of commuting at the employer's request, and the required use of a van or light truck that remains on-call, along with the employee, on a 24-hour basis. Without the full-time availability of these vehicles, the cable industry could not possibly respond with the immediacy necessary to act on emergency situations as they develop. Subscribers who lose service in a power failure or experience technical difficulty do not want to be told to wait until morning for their television picture to be restored, nor does the industry desire to disserve their subscribers by operating their business in this manner. But the employee who is required to assume standby duty in order to maintain full-time cable service should not have to bear a financial burden for performing this legitimate and necessary function. To impute income to an employee for use of a company car in commuting, without taking into account the circumstances surrounding such use, is grossly inequitable. We therefore propose that the IRS eliminate its requirement under section 1.274-6T(2)(vii) that income be imputed when a vehicle is required to be used for commuting purposes. If it is determined that the requirement should be retained, the regulation at the very least should be amended to exempt from the imputation of income those vehicles used directly in the business of providing cable television services.

As a general matter, NCTA questions whether there is a need for any of the recordkeeping requirements of section 274, particularly in light of the substantial burden they will impose on legitimate business operations. While we endorse the exception from recordkeeping for business vehicles kept at the employer's business premises and for those vehicles required to be used for commuting, we believe that the bookkeeping requirements that have been retained for all other uses of business vehicles are also unfair. NCTA submits that repeal of the rule requiring "adequate contemporaneous records" to be kept for automobiles and certain other vehicles is far preferable to endorsing the kinds of onerous requirements that have emanated from the IRS temporary regulations.

Respectfully submitted,

JAMES P. MOONEY,
President and Chief Executive Officer.

STATEMENT OF THE NATIONAL COUNCIL OF FARMERS COOPERATIVES

The National Council of Farmers Cooperatives (NCFC) is a nationwide association of cooperative businesses which are owned and controlled by farmers. Its membership includes 107 major marketing and farm supply cooperatives, the 37 banks of the cooperative Farm Credit System, and 32 state councils of farm cooperatives. Five out of six U.S. farmers are affiliated with one or more cooperatives. The National Council represents about 90 percent of the more than 6,100 local farmer cooperatives in the nation, with a combined membership of nearly 2 million farmers.

On January 22, 1985 the NCFC Board of Directors adopted a resolution supporting legislation to repeal proposed IRS regulations in recordkeeping for farmer and company-owned vehicles. The Board of Directors felt the regulations, as initially proposed by the Internal Revenue Service, were onerous, time consuming, costly and inefficient.

Since the adoption of that resolution the Internal Revenue Service has issued new interim proposed regulations that purport to provide a "safe harbor" for qualifying farmers to consider 70 percent of a automobile's use and 80 percent of a truck's use as business use. However, the so-called safe harbor provision for farmers is deficient in several respects.

First, it would not include most family farmers. The proposed regulations provide that a person receiving 70 percent of his gross income from farming may qualify for the safe harbor provision. However, only 12 percent or approximately 284,000 of America's 2,086,000 farmers are currently able to meet such a test. This safe harbor excludes those farmers hardest hit by the failing agricultural economy—the family farmers with sales between \$40,000 to \$100,000.¹

Second, there are no provisions protecting persons who mistakenly rely on the safe harbor provision and later find they do not qualify. The uncertainties inherent in farming, such as fluctuating prices and intemperate weather, make it impossible to assure that a farmer who qualifies for the safe harbor one year will be able to do

¹ Economic Research Service, "Economic Indicators of the Farming Sector: Income and Balance Sheet Statistics." 1983, ECIFS 3-3, September 1984, pp. 80, 89, 90.

so the next. A farmer who had mistakenly relied on the safe harbor provision, and thus not kept contemporaneous records, would lose his otherwise legitimate vehicle business deduction if his farm income happened to fall below 70 percent of his gross.

Third, farm employees should be exempt from the imputation of commuting income. Under the current regulations, farm employees who drive an employer's vehicle to and from home will have the commuting value of the vehicle imputed to them as a taxable fringe benefit subject to withholding. This commuting rule is unrealistic and unmanageable when applied to farm employees and merely adds to burdensome recordkeeping already required in farming operations.

In addition, under the new interim proposed regulations, the provisions for company-owned vehicles remain as burdensome and unrealistic as the original proposal. NCFC feels the proposed regulations do not go far enough in simplifying the recordkeeping requirements for other vehicles used for business purposes. In fact, it seems ironic that at the same time a myriad of bills to simplify the Tax Code have been introduced, the Internal Revenue Service would issue interim regulations to require such burdensome and unnecessary documentation.

Finally, the effective date of any changes in the regulations should not occur until the tax year following the year in which the regulations are finalized. Until such time, any method of recordkeeping which satisfies the pre-1984 statutory requirements should be permitted. In the meantime, taxpayers should not be expected to comply with unnecessarily burdensome and universally unpopular regulations that have not been the subject of full scale public hearings.

In summary, unless the proposed regulations are significantly amended to remove burdensome recordkeeping requirements and provide a reasonable framework for compliance, NCFC continues to support legislation seeking their complete repeal.

NATIONAL EDUCATION ASSOCIATION,
Washington, DC, March 6, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR CHAIRMAN ROSTENKOWSKI: The National Education Association, representing 1.7 million education personnel in the nation's schools and postsecondary institutions, supports pending legislation that would repeal Sec. 179(b) of the Tax Reform Act of 1984 (Public Law 98-369). It is our belief that this section of the Act and subsequent IRS regulations to implement it impose a severe and unwarranted burden on the nation's taxpayers.

The 1984 Act required, for the first time, that taxpayers maintain "contemporaneous" records in order to obtain any deduction or credit for the business use of such property as automobiles and other means of transportation, property used for entertainment, recreation and amusement, and computers. In order to comply with the requirements of the law, an individual would have to maintain a daily log showing the exact time during which such property was in use for business purposes. Expert witnesses, including several Members of Congress, have pointed out that this requirement would yield only \$1 billion in new revenue, while the cost of enforcement could be as much as \$7 billion. Even if these figures represent only an educated guess, the additional harassment of taxpayers under Sec. 179(b) would be ludicrously counterproductive.

Further, NEA is concerned that Sec. 179(b) could have the effect of inhibiting or discouraging the business use of automobiles and other property by teachers and other education personnel, many of whom perform itinerant or ancillary services that require the use of motor vehicles or the performance of which is enhanced by the use of personal equipment such as computers. Such services are a significant part of the effort that educators everywhere are making in order to improve instruction and extend educational opportunities to youth and adults who, because of economic disadvantage, handicap, or geographic location are denied full participation in the educational process. If the result of federal tax policy is to reduce such services, federal tax policy clearly becomes bad educational policy.

We urge you to support proposals such as H.R. 750, which would repeal Sec. 179(b) as if it had never been enacted and require the Secretary of the Treasury to conduct a study of the overstatements of deductions or credits attributable to the use of cars or other types of property that have substantial personal use. The study proposed in

this bill would also consider methods of reducing these overstatements that would be less burdensome than requiring that contemporaneous records be kept.

Sincerely,

LINDA TARR-WHELAN,
Director of Government Relations.

STATEMENT OF CHARLES F. HAYWOOD, PRESIDENT, NATIONAL FOOD BROKERS ASSOCIATION

INTRODUCTION

Mr. Chairman and Members of the Committee, I am Charles F. Haywood, President, National Food Brokers Association, 1010 Massachusetts Avenue, N.W., Washington, D.C. 20001. I appreciate the opportunity to express the views of NFBA on the Treasury Department's revised temporary and proposed regulations relating to the record-keeping requirements for automobiles.

NFBA is composed of approximately 2,500 food broker companies operating offices nationwide. NFBA members serve as sales agents of manufacturers and processors of food, groceries, and related products. Members represent an average of 35 principals selling products to customers in their market area. Because they represent many sellers' products at one time using their expert knowledge of the market, food brokers are the most cost effective sales system available to the manufacturer in the distribution of its products. Because of their efficiency, food brokers account for over 70 percent of the sales of processed foods in the United States, an all-time record. The success and growth of food brokers in the United States is the direct result of being able to sell more merchandise at less cost.

Food brokers are large users of automobiles in the selling and service of their accounts. A major broker may own or lease hundreds of automobiles for business use. Broker employees travel extensively by automobile throughout their market areas, selling the products they represent, as well as servicing and merchandising food and grocery customers.

The expense of acquiring, maintaining, and operating automobiles is a major item. The difference between profit and loss frequently depends on the ability of the broker to reduce his automobile expense. Increases in automobile expense, such as record keeping for tax purposes, especially when the added expense is unnecessary and unproductive, causes harm not only to food brokers, but to the general economy, as well as increasing inflationary pressures.

PUBLIC REACTION TO RECORDKEEPING REGULATIONS

Few proposed tax regulations have generated more opposition and controversy than have the January 25, 1985 and subsequent Internal Revenue Service' announced requirements with respect to keeping "adequate contemporaneous records" for use of automobiles and other road vehicles. NFBA received numerous communications from members protesting that the government recordkeeping requirements are excessively and unnecessarily costly, burdensome, and unfair. Small brokers were especially strong in their complaints, stating they cannot cope with the added expense and complexities of complying with the new regulations. Many food brokers regard the new regulations as the single most burdensome government recordkeeping requirement they have ever had to contend with.

Similar protests have come from business executives in many other lines of commerce, as from farmers. These complaints were received by the Members of Congress in such large numbers that this issue has now become a major tax controversy. Over 240 Members of Congress have called for repeal of the law authorizing the requirements.

In response to such overwhelming criticism, the Treasury Department recently modified its requirements issuing revised temporary and proposed regulations. The purpose of these revisions was to reduce the burden on taxpayers in keeping the required records for the use of automobiles and other road vehicles. NFBA has carefully considered the modified regulations as they apply to the food broker business. Many of the revisions intended to make the recordkeeping requirements less onerous and costly for business, have failed to produce this desired result. Later in this statement, I will explain the basis for this conclusion.

The adverse impact of these recordkeeping requirements on the country is a matter of special importance. It is estimated that well over 30 million vehicles are substantially affected. One out of every 3 automobiles sold is for business use, and there are over 10 million automobiles sold in fleets of 4 or more. It is not an exag-

geration to state that complying with the automobile recordkeeping requirements recently imposed by the Treasury Department will cost taxpayers hundreds of millions of dollars more than is collected in increased tax revenues. This means no one benefits from these regulations. Both taxpayers and the government lose; the entire nation loses. A tax regulation under which neither the government nor the taxpayer gain has no justification for existence. It is one of the chief reasons why most people today favor tax simplification.

MODIFIED REGULATIONS—NO HELP TO FOOD BROKERS

Recently, in response to a large number of taxpayer complaints, the Internal Revenue Service amended its automobile recordkeeping requirements in what was purported to be an effort to make them workable and realistic. Unhappily, examination of the amended requirements show they do not measure up to this purpose. For food brokers, especially small firms, the amended recordkeeping regulations offer very little relief from the costly burden of compliance.

For example, the amended regulations contain a special rule valuing the use of an employer-provided automobile to an employee for commuting at \$3.00 per day. However, a broker cannot use this special rule with respect to any employee who is an officer of the company, or who owns more than 1% of the value of the business.

The one percent (1%) owner limitation is very harsh on small business, closely-held concerns, and companies not publicly owned. Most broker firms fall within this category.

The framers of the \$3.00 per day commuting value exception to the automobile record requirement regulation imposed a condition on its use which substantially forecloses its use by the vast majority of food broker concerns and by small business generally. Many small companies provide stock purchase plans for their employees as an incentive to retain their services and to preserve their business continuity. Large corporations with publicly held stock widely dispersed not offering an employee stock ownership plan will not be so adversely affected by the one percent owner requirement prescribed in the regulation. But the same conclusion cannot be stated with respect to small business. The regulations appear to have an inherent bias against small business.

This discrimination is particularly unfortunate because small concerns' limited resources constrain their ability to satisfy the recordkeeping requirements. Adding compliance barriers in the regulation which impinge on small business lacks justification.

Many other provisions of the modified regulations have a minor and inconsequential effect alleviating the recordkeeping burden imposed on food brokers. Included in this category are allowing: log entries based on odometer readings; use of data from trip sheets and expense reports; omitting the name of the driver of the automobile for each use when one person regularly uses the vehicle, and a one log entry for uninterrupted use of the automobile.

These changes in the regulations, while intended to provide substantive relief for the taxpayer burdened by the recordkeeping requirements, fall far short of attaining significant progress toward that goal.

The regulation continues to provide that the "adequate contemporaneous record" requirement be satisfied by keeping a log, journal, diary, or similar record for each use of the automobile and that each entry must contain the date of the user of the automobile, the name of the user, the number of miles traveled, and the purpose of the use of the property. Unless the taxpayer can qualify for an exception to these requirements (which most food brokers will not find possible), there is no escape from the costly burden the regulations imposed.

REPEAL DESIRABLE REMEDY

Prior to passage of Section 179 of the Deficit Reduction Act of 1984, a taxpayer was required to substantiate a claimed tax credit or deduction connected with the use of an automobile for a business purpose. This substantiation had to be provided by adequate taxpayer records and other evidence showing place, miles driven, expenses, business purpose, date and user of the automobile. The taxpayer had the burden of fully justifying any tax credit or deduction he claimed. A clear distinction was made between deductible business expenses and non-deductible personal expenses. Without adequate records to substantiate any claimed tax credit and tax deduction, the taxpayer was not entitled to the credit or deduction.

This principle was just as well established before the Deficit Reduction Act was passed as it is now after the Act has been passed. All the new law and its burdensome requirements accomplish is adding to the broker's record keeping problems

and costs associated with the required paperwork. Food brokers with legitimate tax deductions and tax credits based on operating automobiles for business purposes face substantial increases in the cost of record keeping to substantiate their claims under the new law and regulations. Nothing beneficial either to the taxpayers or to the government has been accomplished. All that has resulted is a waste of time, effort, and money.

The revised regulations are an attempt to answer these criticisms of the new law. They fail to do so. They fail to provide much needed relief for food brokers from unnecessary record keeping. Food brokers are honest, law abiding business persons who find the new automobile record-keeping requirements not only complex and cumbersome but unnecessary and a waste of resources, both by the government and by the taxpayers. As I have said earlier in this statement, and now repeat because of its importance, no one gains under these new regulations.

Small business, which makes up most of food broker concerns, is a major victim of these regulations. They can least afford the increased cost of the added record keeping.

A conservative estimate of \$950.00 a year for an estimated 3,500 food brokers in preparing and maintaining automobile use records required by the regulations indicates a cost of approximately \$3,325,000 per year for this segment of the business community. Based on the nation's 14 million small businesses, the estimated cost of complying with the new record-keeping requirements for business use of automobiles and other property would easily exceed \$10 billion. This is far too much to pay for little or no benefit in return.

For these reasons, Mr. Chairman, NFBA urges the Committee on Ways and Means to report out a bill for repeal of Section 179 of the Tax Reform Act of 1984 amending Section 274(d) of the Internal Revenue Code in so far as it relates to use of a passenger automobile and other property utilized for transportation. We believe the facts show this recommended change in the law benefits the public interest by increasing economic productivity and by adding to tax revenues to reduce the national deficit.

We thank the Members of the Committee for the opportunity to present this statement.

STATEMENT OF T. PETER RUANE, PRESIDENT, NATIONAL MOVING & STORAGE ASSOCIATION AND NATIONAL INSTITUTE OF CERTIFIED MOVING CONSULTANTS

BACKGROUND

The National Moving and Storage Association is a non-profit trade association organized and existing under the General Not-for-Profit Corporation Act of the State of Virginia. Its offices are located at 124 South Royal Street, Alexandria, VA 22314.

NMSA has been in existence since 1920. It is the oldest national trade association in the household goods moving and storage industry. The Association's membership is comprised of over 1,300 local and international movers, agents and warehousemen located throughout the United States and 63 other countries.

The NICMC is a ten-year old non-profit educational association comprised of over 1,000 sales and marketing personnel and companies in the moving industry. The purpose of the Institute is to improve the quality of service to the consumer by upgrading the professional abilities of sales people through self-study, continuing education, and a non-partisan certification program.

The majority of members in both NMSA and the Institute are small businesses and independent entrepreneurs. Approximately 80 percent of NMSA's members can earn \$1,500,000 or less per annum. Nearly half of the membership's (about 43%) annual revenues approximate \$500,000. It should be noted that most moving companies are family-owned businesses, with less than 20 permanent employees.

In preparing its comments for this hearing, NMSA and NICMC have had the benefit of feedback from recent membership mailings, an Executive Committee meeting and the results of the January, 1985 Small Business Legislative Council's Annual Issues and Policy Conference. Therefore our comments reflect the current feelings of our members in communities across the nation.

IMPACT OF REGULATIONS ON MOVING INDUSTRY

As a service industry relying heavily on motor vehicles, our membership is deeply concerned about the imposition of additional paperwork requirements represented by the proposed Internal Revenue Service (IRS) vehicle recordkeeping rules. This is especially ironic in light of other government efforts and legislation aimed at reduc-

ing paperwork burdens on our industry (i.e. Motor Carrier Act of 1980 and Household Goods Transportation Act of 1980).

The proposed (IRS) vehicle recordkeeping rules, even with recent modifications, pose a substantial paperwork burden on our small business members. Further action will be necessary to resolve this problem.

The Tax Reform Act of 1984 created special rules for retaining the tax benefits of company vehicle ownership. The heart of these rules is the requirement that the business or personal use of a company vehicle be contemporaneously compiled-listing the user, date, place of use, time, distance and purpose of the trip.

The recently announced Treasury Department modifications of the IRS rules are a step in the right direction, in that they will help to reduce the paperwork burden for some portion of our businesses. For example, we support the modification which enables taxpayers to satisfy the contemporaneous record requirement by single entries for periods of uninterrupted business use. This modification will permit a household goods salesperson who is engaged in an overnight sales trip to make a single entry for an entire trip. The modification also simplifies recordkeeping for those who spend most of a normal day using a vehicle, such as the sales people the NICMC represents.

However, other than for sales personnel, these modifications do not appear to reduce the paperwork burden.

Specifically we are concerned with the definition of "other listed property" including "means of transportation," and its applicability to the moving industry.

The moving and storage industry typically utilizes (in addition to passenger automobiles) vans, pickup trucks, packing trucks, straight vans and tractor trailers in the everyday performance of moving service for the public. We urge that these vehicles be exempted from the definition. The imposition of the recordkeeping regulations on these commercial vehicles, is unnecessary, will not produce results intended by the Tax Reform Act and is paperwork burden that will adversely impact the small business segment of our industry.

SUGGESTED ACTION

Both NMSA and NICMC believe that the recent IRS modifications to the subject rules do not adequately resolve the problem created by the proposals. We believe that the contemporaneous recordkeeping requirements are unnecessary, inefficient and counterproductive. Hence, nothing short of outright repeal will be sufficient to resolve the practical problems created by the rules in the "real world".

In addition, the modifications announced by the IRS would keep intact the automatic penalties for tax preparers and taxpayers provided in section 179(c). Automatic penalties are patently unfair for failure to comply with such complex rules. The law should, at a minimum, provide a grace period before penalties are applied.

In sum, legislation is required to cure the defects of sections 179(b) and (c) of the Tax Reform Act of 1984. The modifications proposed by the IRS simply will not resolve the problem in the minds of our members.

We appreciate your consideration of these views and look forward to your support.

STATEMENT OF DAN HALL, EXECUTIVE DIRECTOR, NATIONAL POTATO COUNCIL

The National Potato Council (NPC) vigorously opposes the United States Treasury's attempt to require "contemporaneous recordkeeping" for trucks, vans, pickups and other vehicles.

For the record, the National Potato Council is a national, nonprofit trade association representing all U.S. potato growers in legislative and regulatory issues. The National Potato Council consists of members from 37 potato-producing states and further represents the views of almost 12,000 U.S. potato growers or potato-producing firms.

At the NPC annual meeting in January 1985, the following resolution was adopted.

Whereas, Section 274 of the Internal Revenue Code, effective January 1, 1985, requires extensive recordkeeping in the form of a logbook for each vehicle that depreciation or investment credit is claimed; and

Whereas, this log is to be kept on a daily basis including starting mileage, destination, purpose of trip, ending mileage and other information to confirm the business nature of each individual trip; and

Whereas, those engaged in farming will be required to keep the above-mentioned logbooks on all pickups or other vehicles under 6,000 lbs. GVW; and

Whereas, the number of trips made daily and varied personnel using the vehicles make this requirement not only difficult, but also impossible to comply with accurately, to the extent that this requirement is almost a form of harassment to claim a rightful deduction for a legitimate business expense;

Therefore, Be it Resolved, that the National Potato Council through its officers and committees, solicit the cooperation and assistance of other commodity and farm organizations, along with Members of Congress, to work through whatever means necessary to modify Section 274 of the present regulations of the Internal Revenue Code to specifically exclude the logkeeping requirement for all vehicles used in the business of agriculture. Further, that an emergency exists in that many farmers are unaware of this requirement and that legitimate deductions may be lost and further much confusion and lost time will occur, that this resolution take priority in the matters of the National Potato Council and that actions be taken immediately to stop this unwarranted intrusion into our private business affairs.

The National Potato Council lends its support to legislative efforts that would return the regulations to their status prior to January 1, 1985. Since we do not believe the IRS rewritten proposed regulations prove satisfactory to our industry, we support legislative relief from the proposed regulations. We understand bills have been introduced in the Congress that would accomplish the goal of returning the regulations to their prior status.

In conclusion, the National Potato Council strongly urges the Congress to act quickly on this matter of great importance to the potato industry, other commodity and farm organizations, and small businesses throughout the country.

STATEMENT OF RONALD A. SARASIN, DIRECTOR, GOVERNMENT RELATIONS, NATIONAL RESTAURANT ASSOCIATION

The National Restaurant Association is the leading trade association for the foodservice industry. Foodservice industry sales currently represent nearly 5% of GNP, with 1984 sales totalling \$162 billion. NRA's 10,000 members represent more than 100,000 foodservice outlets, who are engaged in a variety of businesses associated with the consumption of food away from home. They operate fast food outlets, cafeterias, full-service restaurants, and provide foodservice for various institutions, such as hospitals, universities and military clubs.

With the enactment of Section 531 of the Tax Reform Act of 1984, the Congress terminated the legislatively imposed moratorium on the taxation of fringe benefits. Certain fringe benefits are now taxable pursuant to Section 61 of the Internal Revenue Code. In addition, employers are now required to make appropriate withholdings on the value of fringe benefits received by employees.

One fringe benefit in particular—the employee's personal use of an employer-provided automobile—has raised many questions for both employers and employees. Recordkeeping requirements for employers and employees, which surpass anything ever enacted before, became effective on January 1, 1985. This massive, expensive recordkeeping applies not only to automobiles, but also to trucks, vans, planes, and computers. IRS regulations require a log to be kept for the use of these items. Every entry in the log must include the time, date, purpose, user's name, place of use and mileage, or length of time used. Without constantly kept records, an employer will lose his deduction and part or all of the value of using the property will be taxed to the employees. This provision creates costly and unnecessary recordkeeping and compliance costs for business of all sizes.

The National Restaurant Association surveyed its members in 1984 and found that 47.8% of the respondent companies provided vehicles to employees for business use. Not only is this paper-generating provision interfering with normal business operations, but the new and constantly changing regulations from the Internal Revenue Service have confused and angered these business operators. Our members do not object to fair taxation, but do object to excessive and unnecessary recordkeeping requirements.

The recent liberalization of the regulations, published February 20, 1985, does not reach to the heart of the problem. The real problem is that restaurant businesses are, like many businesses, overburdened with government paperwork requirements. The National Restaurant Association thanks this Committee for reviewing this problem in a timely fashion, and respectfully urges prompt action on one of the many bills introduced to repeal this onerous legislation. We support H.R. 531 by Honorable Beryl Anthony, and stand in favor of its approval by this Committee and passage by the full House of Representatives.

STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association (or "NRMA") is the nation's largest trade association for the general merchandise retail industry. Its members operate approximately 40,000 leading department, chain, independent and specialty stores in the United States. Annual sales of NRMA members exceed \$150 billion and member firms employ more than 3 million workers. Accordingly, changes in the tax law which affect the day-to-day operations of U.S. businesses and the employer-employee relationship are of major consequence to NRMA.

The Tax Reform Act of 1984 (and the regulations which have been promulgated pursuant to that legislation) contains two changes from prior law regarding use of company owned automobiles: (1) a new contemporaneous record-keeping requirement to substantiate tax benefits claimed by businesses with respect to company vehicles and (2) a new withholding requirement. Several sets of recently issued regulations carry out the mandate of these new rules by dramatically increasing the record-keeping and withholding tax compliance burdens that are imposed on employers. The NRMA believes that these new requirements are so unnecessarily burdensome that they should be repealed.

1. BACKGROUND

Prior to the Tax Reform Act of 1984, the tax law permitted a taxpayer to substantiate business use of a company vehicle with "adequate records or by sufficient evidence corroborating his own statement." Generally, taxpayers were dealt with on a case-by-case basis in what was treated as, essentially, an audit issue. The national treasury was protected by the discretion of revenue agents to examine and pass on the adequacy of each taxpayer's records.

With the Tax Reform Act of 1984, Congress replaced the "fact and circumstances" substantiation requirement with a new "adequate contemporaneous records" requirement. This seemingly small change, which took literally just a few words to enact, has not been so simple to implement.

To date, the IRS has issued three sets of regulations, comprising some 50 pages, which affect the tax treatment of company vehicles by employees. Because of cross references, defined terms and amendments, the sets must be read together to fully understand their use and application. It has become increasingly apparent that the brevity of the statutory enactment cannot be duplicated on implementation.

2. PROBLEMS PRESENTED BY THE NEW RULES

NRMA has identified a number of problems presented by the new rules. These problems are discussed below.

A. Recordkeeping burden

Under the new rules, no deductions or credits with respect to vehicles are allowed for tax purposes unless substantiated by "adequate contemporaneous records." To satisfy this requirement, a log, diary or journal must be maintained with respect to each vehicle and a separate entry must be made at or near the time of each use of the vehicle. The entry should include the date, name of user, number of miles and purpose of the use. For vehicles owned by the business and used by an employee, the business may use and rely upon records kept by the employee.

The cost of putting the necessary recordkeeping system into operation will be extraordinarily burdensome. It will be necessary for the business to obtain log books which would have to be the proper format to record the information required to be provided by the user of the vehicle. These log books would be distinct from other business records which are kept. Prior to the new rules, it has generally been possible for business to satisfy the tax law substantiation requirements with records that the business would maintain in any event. A good example is the credit card slips which are used to substantiate business travel on airplanes. The new rules depart from this past practice by obligating the business to amass and maintain a library of information that the business does not otherwise need. Thus, new rules will create a costly recordkeeping and record-maintenance burden for businesses (and may also increase the burden on examining agents).

Beyond the out-of-pocket costs, the new rules interject a great deal of inconvenience in normal business travel. The effect of the rules is to force every employee to become a bookkeeper. In the past, the tax system has in general functioned efficiently because the recordkeeping requirements of the system have been transferred to individuals specially trained and prepared to handle recordkeeping. The new rules effectively mandate that people who earn their living through salesmanship,

manual labor or supervising must become bookkeepers. Many individuals will simply not be able to adjust to the amount of paperwork required of them by the new rules.

Some businesses will deal with the new rules by requiring employees to furnish their own cars for use in their work. In that way, businesses will not have to account for the business or non-business use of automobiles—the problem will be transferred to the employees. Not only will this impair the employability of certain employees, but it will also create substantial administrative inconveniences for the Internal Revenue Service itself. Where the automobiles are owned by the business, the Internal Revenue Service can monitor the abuse of non-business use of automobiles through an audit of the business whose employees have been using the automobiles for personal use. If the new rules encourage business to require employees to use their own cars, the Internal Revenue Service will be forced to audit each individual employee to track non-business use of automobiles.

B. Negative impact on employee relations

The withholding and fringe benefits regulations have been amended to encompass the new contemporaneous substantiation requirement. These changes will require businesses to increase the withholding taxes of well-meaning employees whose automobile use records, while satisfying the facts and circumstances test of prior law, do not meet the stringent contemporaneous requirement of the new rules. Furthermore, even in cases where the substantiation is adequate, the employee may, nonetheless, be forced to recognize income under the fringe benefit rules (with concomitant withholding by the employer) in instances that, as a matter of fairness and logic, should be tax neutral. For example, it appears that if an employee of a retailer were to drive a company vehicle home so that he could be prepared to make early morning deliveries the next day without first traveling to the employer's premises, the regulations would treat that drive home as personal use that could subject the employee to taxation; this will be perceived as unfair where the sole motive for driving the vehicle home is to accommodate business needs. As a result, the effect of the new rules will be to create unproductive conflicts between the business and its employees, frustrating the creation of a cooperative business atmosphere. The complications of withholding will further increase the tendency of businesses to require employees to furnish their own automobiles creating the undesirable results discussed above.

C. Implementation problems for businesses

The new rules would be burdensome for both large and small businesses that do not have an established bureaucracy for handling the record-keeping rules. Businesses not currently possessing the manpower and supervisory staff necessary to administer these complex rules would be forced to implement such administrative structures, thereby incurring additional operating costs which must inevitably be passed along to the consumer. Moreover, beyond the problem of cost, the proposed regulations are long and complex. The numerous cross-references and defined terms and the existence of multiple sets make understanding the regulations an extremely difficult task. To illustrate, the proposed regulations provide that "a taxpayer may satisfy the 'adequate contemporaneous record' requirement of Section 274(d)(4) and § 1.274-5T(a) in the manner prescribed in paragraph (d)(3) of this section with respect to the use of a 'road vehicle' (as defined in paragraph (g)(1) of this section) during a period of time if for that period the requirements of paragraph (d)(2) of this section are satisfied." [Paragraph (d)(2) lists seven requirements, including] "the employee required to use the road vehicle for commuting is not an officer or a one-percent owner of the employer." [The regulations explain that] "for purposes of determining who is a one-percent owner, any individual who owns (or is considered as owning) more than one percent of the fair market value of an entity (the 'owned entity') is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414(b), (c) or (m)."

Thus, the complex and highly technical nature of the regulations make it extremely difficult for businesses to navigate through such a morass without incurring additional expenses for outside expertise.

D. Continuing inequities

Despite the length and complexities of the regulations, some horizontal inequities are still apparent. For example, assume both A and B work for Company X and are provided with similar company vehicles which have an Annual Lease Value of \$3,000. A drives 20,000 business miles while B drives only 10,000 business miles. Each also drives 5,000 non-business miles. In A's case the ratio of personal miles to total miles is 20%. In B's case, the ratio is 33%. Thus, despite the fact that each has

had the same non-business benefit from the vehicle (i.e., 5,000 personal miles), under the regulations, the value of the benefit received by A would equal \$600 (20% of \$3,000) while the value of the benefit received by B would equal \$1,000 (33% of \$3,000). As a result, B's withholding taxes in respect of this non-cash income would substantially exceed A's withholding taxes in respect of the same item.

3. CONCLUSION

In attempting to clarify the tax treatment of the use of company vehicles by employees, Congress enacted a simple change in the statute. Despite the best efforts of the IRS to implement the new provisions, however, the length and complexity of the regulations demonstrate that clarity has not been achieved. Instead, additional record-keeping and withholding burdens have been placed on both employers and employees. Furthermore, inequities remain.

For these reasons, NRMA urges the repeal of the recently enacted amendment to the substantiation requirement. The adequacy of substantiation of use of company vehicles by employees would then be an audit matter, to be determined on a case-by-case basis in the sound discretion of the auditing revenue agent. Adopting this course of action would eliminate what NRMA believes to be excessive burdens on business without jeopardizing taxpayer compliance or effective tax administration.

STATEMENT OF WALLACE F. TILLMAN, SENIOR REGULATORY COUNSEL, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

My name is Wallace F. Tillman. I am Senior Regulatory Counsel for the National Rural Electric Cooperative Association (NRECA), the national service organization of nearly 1,000 not-for-profit rural electric systems serving consumer owners in 46 states. These relatively small cooperatively-owned electric utilities covering most of the land mass of the United States are located in about 2,600 of the nation's 3,100 counties. They own and operate about 44% of the miles of distribution line, but serve less than 10% of the nation's population and have an average of fewer than 5 consumers per mile. The typical rural electric system has 1,870 miles of line and 7,400 consumers in portions of three counties.

Let me first express my appreciation and that of our member systems for the opportunity of providing a statement regarding Treasury's proposals which will adversely impact both the consumer owners of NRECA's member systems and the employees of these systems. As you, Mr. Chairman, and the members of this committee are more than aware due to the number of bills that have been introduced on this subject in response to a general outpouring of criticism, the Treasury proposal will adversely affect a large segment of the population. Many who are appearing here, can and will articulate as well or better than I, the arguments against the overly burdensome record keeping requirements set forth in the October 24, 1984 proposal and subsequent revisions.

Generally, NRECA's member systems are tax exempt under 501(c)(12) of the Code. There are, however, over twenty generation and transmission cooperatives that are subject to taxation because they have sales to nonmembers in excess of 15 percent of their total and have thus lost their exempt status. The burden placed on them will be similar to that on many businesses you have been hearing from and will hear from today. Additionally, rural electric cooperatives serve most of the farm population of America, and the record keeping requirements of the Treasury proposal add one more burden to these rural electric consumer owners who are already reeling under the economic pressures threatening their very survival as farming and business entities.

The primary focus of my comments, therefore, will be on the Treasury proposal set forth in the Federal Register on January 7, 1985 entitled "Taxation of Fringe Benefits; Proposed Rulemaking." The focus of this proposal, effective January 1, 1985, is to establish the conditions under which an employee's use of a company vehicle will be considered as personal use and, therefore, taxable as a fringe benefit to that employee. As we read the proposal, there are many circumstances under which the employees of rural electric cooperatives in the performance of public service will find themselves subject to taxation for the use of vehicles required by the management of the cooperatives and essential to the integrity of the systems. We do not believe that it was Congress' intent in targeting "fringe benefit" abuses to go as far as the Treasury proposal does.

A continuous and dependable supply of electricity is considered, by almost anyone's standards, a critical need. The loss of electricity under many circumstances is more than an inconvenience; it is life threatening. It is, therefore, a standard prac-

tice that all electric utilities require certain of their personnel to take home vehicles which are specially equipped to respond to supply outages. These vehicles vary from large trucks with bucket lifts, referred to as "bucket trucks" or "cherry pickers" to automobiles with two-way radios used to direct and supervise crews working in a variety of locations.

The need to have dispersed equipment is especially critical to the operation of rural electric cooperatives because of the large land areas they cover. By requiring that certain personnel take vehicles home, the cooperative is able to effectively place workmen throughout the service territory, thereby responding more quickly and readily to supply outages. As previously mentioned, the average cooperative covers 1,870 miles of distribution lines for only 7,800 consumers. Needless to say, the high cost of covering these areas dictates that personnel be limited and used as effectively as possible. Requiring workers to drive long distances to the cooperatives' motor pool in the middle of the night, then drive to the scene of the problem, does not effectively remedy the problem nor wisely use personnel.

Comments are due March 8 on the Treasury proposal on fringe benefits and already NRECA has received copies of numerous letters opposing the position taken by Treasury. Consider some of the following statements:

From North Carolina Electric Membership Corporation, Raleigh, N.C.: "... our EMCs have several concerns about the temporary IRS regulations. . . . These concerns center around the employees who, because of the critical need for prompt response to service outages, are required as a part of their duties to drive service vehicles or radio-equipped cars or station wagons home after work. By so doing, they are able to significantly shorten the emergency response time as members of a service crew." The regulations "have placed a severe and unjust penalty on employees in these situations, treating their mandatory company transportation (often a pain-in-the-neck to them) as added income."

From Carroll County REMC of Delphi, Indiana: "This service that we provide is often life preserving (heart patients, people on respirators, people in nursing homes, etc.). For us to provide the quickest type of response, company vehicles are a must, which are of course equipped with radios."

From Morgan County Rural Electric Membership Corporation, Martinsville, Indiana: "Certainly, if a line service crew takes the utility vehicle home while on call and that mileage would result in a tax liability under the present regulation, such action would probably result in the employees' refusal to take a vehicle home and would severely and unfairly impose a deterioration of service restoration for our consumers."

From Fayette Electric Cooperative, Inc. of La Grange, Texas: "Certain employees 'are provided company vehicles and are expected to go direct to the scene of wrecks, fires, substations, or other causes of power outages or electrical hazards from their homes after regular working hours. . . . Their vehicles are equipped with two-way radios. . . . We feel their ability to respond quickly is certainly a benefit to the cooperative and to the consumers to whom we supply electricity."

From Orange County REMC, Orleans, Indiana: "I am particularly concerned about those regulations which are very broadly written and will affect a number of my employees who are on call 24 hours a day and require special tools and equipment to effect emergency repairs. These personnel are required to take a company-owned vehicle to their homes so that emergency calls are more quickly dispatched."

From Midstate Electric Cooperative, Inc., LaPine, Oregon: "... we require trained linemen to take specially equipped vehicles home with them for after-hours standby use only. The use is not a benefit but a requirement for the quick restoration of power during outage conditions."

From Jackson County Rural Electric of Brownstown, Indiana: "We have already spent more time trying to read and understand the proposed regulations than the IRS can possibly gain in increased receipts from our employees this year."

Finally, at NRECA's recent 43rd Annual Meeting celebrating the 50th anniversary of rural electrification and attended by over 11,000 people, the membership adopted the following resolution:

Taxation on Fringe Benefits: Cooperative Owned Vehicles

Certain employees of rural electric cooperatives are required as a part of their duties to drive and take home specially equipped vehicles because of the critical need for prompt response to service outages. By doing so, they are able to significantly shorten the emergency response time as members of a service crew. Additionally, personnel with radio-equipped vehicles at their residences can more promptly direct the necessary coordination for restoration of service involving multiple outages.

Proposed Treasury regulations issued on January 7, 1985 would place severe and unjust penalties on rural electric employees required to take these vehicles home. The proposed regulations, effective January 1, 1985, implement changes allegedly required by the Tax Reform Act of 1984. They make these employees transportation, mandated by company policy and frequently to their own disadvantage, subject to taxation and withholdings as income. Additionally, proposals by the Treasury would place unnecessarily burdensome recordkeeping requirements on the employee and the cooperative.

We urge the Department of Treasury, the Internal Revenue Service and the Congress to modify the proposed regulations to exempt such essential and specially equipped vehicles from the applicability of the proposals regarding the treatment of such usage as a taxable fringe benefit and from the onerous record keeping requirements. In conclusion, let me say that it is abundantly clear, from the comments and resolution of NRECA members, that the taxation of cooperative employees for the use of essential and specially equipped vehicles providing a public service is patently unfair. We are certain that Congress, in seeking to end abuses, did not intend to treat required commuting in yellow and green bucket trucks as a taxable fringe benefit. That truly adds insult to injury.

We urge you, therefore, Mr. Chairman and members of the Committee, as you address the record keeping requirements of the Treasury proposal of October 24, 1984 and its subsequent revision, to also focus on the unfairness of the January 7 proposal relating to fringe benefits. Specifically, we would urge you to exempt from taxation as a fringe benefit the required after-hours use of essential and specially equipped vehicles used to provide a public service, such as that of electric utility employees. We believe that the case for exemption is particularly strong for rural electric cooperatives covering large territories and serving essential needs.

STATEMENT OF TOM W. GRIFFITH, PRESIDENT, NATIONAL RURAL LETTER CARRIERS' ASSOCIATION

Thank you, Mr. Chairman, and Members of the Committee. My name is Tom W. Griffith and I am President of the 66,000-member National Rural Letter Carriers' Association.

Rural letter carriers use their own vehicles to serve fifteen million rural Americans by daily traveling 2,387,951 miles over 35,038 rural routes throughout this country. The average rural mail route is 62 miles in length and has 440 mailbox stops on it. The United States Postal Service, a branch of the Federal Government, through its local Postmasters, certifies the length in miles of each route. This is a necessity because route length is a compensation factor, and because equipment maintenance allowance (EMA) reimbursement is determined by the length of their rural mail route. In fact, for every rural letter carrier, the mileage from their home to the post office (non-business miles) and the mileage for their route (business miles) is exactly the same every day of the year that they work their route. The only change in the contemporaneous record on an annual basis would be the number of days worked in any given year.

Mr. Chairman and Members of the Committee, we are very appreciative that you are willing to hold hearings on this issue. We are concerned about the proposed and temporary regulations published October 24, 1984 in the Federal Register and modified on February 20, 1985. However, we find the modifications to be only slightly less onerous than the original proposed and temporary regulations. In general, we find these regulations to be contrary to the basic programs enumerated by President Reagan and the Federal Commission on the reduction of paper work. These regulations cause taxpayers, and particularly rural letter carriers, absolutely unnecessary additional paper work. In the specific case of rural letter carriers, a daily log is not only unnecessary, it is absolutely redundant. We also find the regulations unnecessarily complex and totally inflexible in their application. We would have a suggestion, and the suggestion would be that in the case of a rural letter carrier, all the service would need is an annual summary, at the most, and that would be quite sufficient for establishing anything the Internal Revenue Service would need to determine our business usage.

We urge immediate passage of legislation to repeal the contemporaneous record-keeping requirement.

We have a second major concern relating to rural carrier vehicle operation. In 1983, the IRS advised the National Rural Letter Carriers' Association that they would no longer allow a "weighted factor" for rural letter carriers' business mileage deductions. The NRLCA National Officers immediately advised all rural letter car-

riers that for the year 1984, they must stop utilizing a weighted factor. However, the Service has begun this year, a nationwide audit of all rural letter carriers for the years 1983 and before, a time when most rural letter carriers did not feel a need to maintain records because previously the Service had never questioned the EMA reimbursement.

We urge Members of Congress to express their concern at the Service's systematic auditing of Federal Government employees who were only advised in later 1983 that the guidelines under which they had been operating, and which had been approved since 1956 by the Internal Revenue Service, had been changed.

Finally, we feel that consideration should be given by the Congress to rural letter carriers for the use of their own vehicles to perform a function for the Federal Government which, in many cases, is the only contact that citizens have daily with their Federal Government. We would urge legislative fair treatment for the business use of a personal vehicle while delivering the United States Mail and performing a service for the Federal Government.

Thank you.

STATEMENT OF L. CARY BITTICK, EXECUTIVE DIRECTOR, NATIONAL SHERIFFS' ASSOCIATION

The National Sheriffs' Association (NSA) is a non-profit association which represents elected or appointed sheriffs throughout the United States who are, of course, county or municipal government officials. The views expressed herein are a direct reflection of those of an overwhelming majority of the sheriffs and members of the NSA.

The regulations issued by IRS under the Tax Reform Act of 1984 (Federal Register for January 7, 1985) as amended, dismayed and discouraged law enforcement officers throughout the United States. They view these regulations as unfair and detrimental to their dedicated efforts to preserve the peace and prevent the criminal element from undermining society in its effort to provide justice for all. They cannot believe Congress, in enacting the Tax Reform Act of 1984, intended the results incorporated in the IRS regulations.

The sheriffs together with other governmental law enforcement agencies are charged with providing emergency services to the public 24 hours a day, 7 days a week and 365 days a year. Obviously, few, if any, cases of domestic violence, serious automobile collisions or violent crimes occur in the vicinity of a law enforcement headquarters or on a convenient 9:00-5:00 schedule. A deputy sheriff or other state or local officer must often respond in the middle of the night to these emergency situations when our citizens vitally need assistance. To respond in an effective manner, the officer must have a vehicle fully equipped to enable him or her to perform the required service. Sheriffs recognize that this requires specially equipped vehicles and trained personnel be strategically located 24 hours a day ready to respond on a timely basis to emergency calls for help. Practically all law enforcement agency heads therefore order trained personnel to take specially equipped vehicles home at night so they can go into action immediately when emergencies occur. To say that this confers some type of personnel benefit to the law enforcement officer is ridiculous. He or she would prefer the privilege of the average citizen in completing an assigned 8 hour tour of duty and being truly off duty for 16 hours. In addition, many deputy sheriffs are assigned in remote, rural areas and are fortunate if they can visit their headquarters' office once a month.

The presence of a law enforcement officer or a marked law enforcement vehicle has been a universally recognized deterrent to crime. As a consequence of this, many governmental units have adopted a policy of requiring that officers use a marked patrol vehicle on a 24 hour a day basis whatever the nature of the official trip. The public is thus reassured and the fear of crime is minimized. In such situations the officer is ready to respond at once should he or she witness an accident or crime, be "flagged down" by a citizen who has been victimized or ordered to emergency duty by radio command.

It is the position of NSA that Congress, in enacting the Tax Reform Act of 1984, never intended that law enforcement officers would be subjected to additional income tax if, pursuant to a valid order of their superiors, they drove to be able to respond to emergency calls for assistance from the citizens of the community or otherwise used the vehicle to provide added law enforcement presence in the streets. If the interpretation of the IRS is allowed to stand either the public will be deprived of emergency assistance because officers will choose to use their private vehicles except during their assigned shift or the local units of government will face in-

creased costs because of a need to reimburse law enforcement personnel for the additional cost of performing their assigned duties arising from the increased federal tax.

STATEMENT OF THE NATIONAL SOFT DRINK ASSOCIATION

The National Soft Drink Association submits these comments for the hearing record of the Committee on Ways and Means during its consideration of the Department of Treasury's record keeping requirements of the Tax Reform Act of 1984. NSDA is the national trade association which represents the soft drink industry in the United States. The industry is comprised of approximately 1500 soft drink manufacturers throughout the United States, of which almost 77% are active members of the Association. These members account for more than 90% of the soft drink production in the country. In addition, the vast majority of soft drink franchise companies which manufacture concentrate syrup, many of whom also own soft drink manufacturing plants, are associate members of the Association.

The Association welcomes this opportunity to present its views on the Department of Treasury's revised temporary and proposed regulations issued as a result of the passage of the Tax Reform Act of 1984. The soft drink industry is one of the largest business users of delivery trucks, transports, vans, pick-ups, and automobiles in the country. These vehicles are used in the production, sales, and distribution of soft drinks. The proposed regulations, and the subsequent changes announced less than a month ago, impact the productivity of our industry's operations, and hence its ability to serve the consumer in the most efficient, least costly manner possible.

In announcing these hearings the Committee expressly limited its interest in "learning what specific additional burdens associated with the new record keeping requirements remain in light of the revisions to the original temporary regulations." These comments will refer to both sets of regulations and the business practices of the industry. While the Service has attempted to clarify as well as to decrease the burdens imposed on taxpayers, by issuing the second set of regulations, the goal will not be accomplished for many, including a significant number in our industry. Some taxpayers are either not accommodated within the narrowly defined set of criteria of the second set of proposed regulations or will opt not to use the "safeharbor" percentages of use.

In summary, it is our industry's position that the "contemporaneous record keeping provisions" of the law should be repealed. Failure to do so will subject taxpayers to a continuation of the process in which two sets of complex temporary and proposed regulations already have been published within four months with yet a third to be published following the Service's hearings in mid-April. Absent this Congressional action, this process has and will continue to result in undermining the credibility of the Service while subjecting taxpayers to uncertainty, increased paperwork, and added costs of doing business. A repeal would allow the Congress the opportunity to assess the scope and nature of the perceived abuse of the Tax Code in these areas and to formulate appropriate remedies.

THE SOFT DRINK INDUSTRY AND ITS USE OF VEHICLES

Our industry puts on the road some 50,000 vehicles daily to service a variety of retail outlets throughout the United States. Over the years these vehicles have included delivery trucks, transports, vans, pick-ups, automobiles, dog sleds, boats, and bicycles. These varieties of delivery vehicles and their many uses are part of a complex delivery system in which soft drink manufacturers deliver product in franchised territories. Those territories and the delivery systems developed by soft drink manufacturers vary in both size and demand. The needs, for example, in downtown Manhattan retail outlets are far different from the small country stores in western Oregon. The Service's attempt to impose additional complex record keeping requirements that these manufacturers must follow to qualify for tax credits and deductions has and will continue to result in taxpayer protests and a belief that once again, government does not understand that which it seeks to regulate.

Prior to the issuance of the new regulations on February 20, NSDA had received from a sampling of its membership analyses of the costs to comply with the original proposals. These samples, from 13 states, range from operations using as few as 15 vehicles to as many as 700. While the number of vehicles subject to the log keeping requirements varied, every operation was impacted at costs ranging from \$2,000 to \$500,000.

A typical analysis of the administrative burden of the record keeping requirements for a large plant produced the following:

The total number of automobiles is 200, each making an average of 15 stops a day. Daily log entries consume $\frac{1}{2}$ hour resulting in 500 hours per week for record keeping. The driver's time is worth, conservatively, at least \$10 per hour resulting in a cost of \$5,000 weekly or \$250,000 annually. Added to this would be the cost of record maintenance of the logs in the office, as well as accountants' time, both of which will vary with the individual plant.

In its revised proposed regulations the Service has attempted to provide relief. Generally, the record keeping requirements will be either decreased or waived if a taxpayer meets very specific criteria. The number of vehicles subject to such revised regulations will vary with individual soft drink manufacturers. However, the fact that any number, large or small, is impacted is wrong if in fact they were not the abusers that Congress sought to curb with passage of the Tax Reform Act of 1984.

In the revisions, one exemption from the log requirement includes a five-part test. The first requirement is that the vehicle must remain on the employer's premises when not used in the business. In the soft drink industry a variety of vehicles are, as a matter of sound business practice, sent home with the employees.

Some employees are on 24-hour call to respond quickly to retail customers who need or want service. Such service needs range from more product at a fountain outlet to rearranging displays in large grocery chains to repairing vending machines. Vehicles may be sent home because insurance costs are decreased. Other operations do not have storage space for their vehicles. Still others have a sound business practice of making calls at the start of the business day without the necessity of reporting to the plant. At times an employee will audit a display in a 24-hour grocery at 5:00 a.m. or earlier.

The related exemption apparently intended to address the practices outlined above also does not adequately address the problem. This second exemption contains a seven-part test including limitations on "de minimus" use; a stipulation that the employee not be an officer or a one percent owner of the employer; and a requirement that \$3.00 a day be charged to the employee for such use.

Such requirements are arbitrary and inconsistent with good business practices. It is not uncommon, especially in small businesses, for officers of companies to be available to respond to business requirements in exactly the manner in which non-officers are on 24-hour call. Moreover, the introduction of a new commuting charge results in legitimate business practices being burdened with added costs. It is unfair to affected employees resulting in morale problems and may require employers to alter business practices at an ultimate cost to the consumer. We do not know how such alteration would affect those manufacturers who have union contracts.

Another exemption applies to employees who visit multiple business locations. It provides for "safeharbor" percentages to allow the taxpayers to satisfy the record keeping provisions by opting for an 80/20 or 70/30 business/personal use ratio depending upon the type of vehicle. Again these are arbitrary choices that will result in an unnecessary record keeping burden on those who use their vehicles in excess of the percentages.

In announcing the revised regulations, the Service simultaneously announced hearings in mid-April. As part of that process, it has invited further comments, for example, on the types of trucks and vans to be excluded from coverage under the new regulations. It is obvious that yet another set of regulations will be forthcoming, at a cost to government and to taxpayers.

NSDA's review of this regulatory process leads us to the conclusion that the only reasonable action which Congress can pursue is a repeal of the contemporaneous provision. At that time Congress should then investigate the abuses that the availability of such credits and deductions have created. Such analysis will allow the Congress the opportunity to initiate more appropriate Tax Code revisions.

There are other issues which go beyond the Committee's call in these hearings. At some appropriate time the Committee should review them. These include, for example, the scope of coverage of the regulations, the policy of imputing income to employees performing duties for legitimate business purposes, and the method of valuation of an employer provided automobile. These issues, in addition to the problems generated by the record keeping provisions, lead to the conclusion that more drafting will only produce more complexity, far beyond the abuses addressed.

**NATIONAL STAR ROUTE MAIL CONTRACTORS' ASSOCIATION,
Washington, DC., February 26, 1985.**

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The National Star Route Mail Contractors Association represents some 13,000 small businessmen and women who contract with the U.S. Postal Service for the over the highway transportation of the mail.

On behalf of the Association, I want to express our appreciation to you, Mr. Chairman, for holding hearings on an issue of major concern to business across the country. All of our members have need for and make use of light trucks and vans and the new regulation's paperwork and the problems they create have a direct impact on the way they figure their usage. There are approximately 5,500 box-delivery contractors who deliver mail to rural America through the use of right-hand drive vehicles and stuffing rural mail boxes 6 days a week. Many of these contractors provide personal services to their customers by picking up groceries, newspapers, etc., and dropping them off as they complete their round trip route. According to the regulation in question these contractors would have to log all such stops as personal use of the vehicle thus making record-keeping a major burden of their service.

The vast majority of our members do not drive "luxury automobiles" and are not responsible for the abuses of the prior law. Moreover, they now account for the use of their business vehicles in a detailed and satisfactory manner using acceptable auditing standards. It is our opinion that the costs to businesses of complying with the new requirement will be greater than any revenue raised.

The Association, therefore, requests that the committee repeal the regulation in question or at the very least, exempt small business from the "adequate contemporaneous records" provision of the law.

We appreciate the opportunity to submit this statement for the record.

Thank you.

Sincerely,

JOHN V. "SKIP" MARANEY,
Executive Director.

**STATEMENT OF PHILIP P. FRIEDLANDER, JR., EXECUTIVE VICE PRESIDENT, NATIONAL
TIRE DEALERS & RETREADERS ASSOCIATION**

Mr name is Philip P. Friedlander, Jr., Executive Vice President of the National Tire Dealers and Retreaders Association. NTDRA is a national nonprofit trade association representing approximately 5,200 independent tire dealers and retreaders nationwide. NTDRA's members are engaged in the wholesale and retail distribution of automobile and truck tires, tire retreading and the sale of related products and services.

Mr. Chairman, on behalf of NTDRA's membership, I would like to take this opportunity to commend you for holding this hearing on the contemporaneous record-keeping requirements of Section 179(b) of the Tax Reform Act of 1984. The need for this review is more timely than ever, given the recent relaxation by the Internal Revenue Service of their original requirements under this regulation. The safe-harbor provisions now being offered by IRS to placate additional taxpayers are Inadequate, Inequitable and Arbitrary! More will be said shortly on this point, but for now it is sufficient to note that the public outcry heard at Rep. Thomas A. Luken's (D-OH) February 8th hearing on this issue has been growing ever-louder.

This hearing today, we feel, will be particularly useful in further focusing congressional attention on the burden which this provision imposes upon American business—especially, small business. Hopefully, as a result of today's hearing, a majority of your colleagues in the Congress will come to share our sense of urgency in seeking the repeal of Section 179(b).

Outright repeal is important. These regulations threaten to negatively impact most business taxpayers in this country. Section 179(b), and the accompanying regulations, will create unnecessary friction between employers and employees. They will require a complicated new bookkeeping system, encourage fraudulent record-keeping, engender taxpayer disrespect for our voluntary compliance system, lower employee and overall company productivity and effectively drain away company profitability. And for what purpose? To collect a hundred million more dollars and to stop the abuses of the few. Surely the incredibly complicated reporting system designed to achieve these relatively insignificant goals must go down as one of the

classic cases of trying to kill the proverbial offending gnat with the proverbial elephant gun.

It is important to recognize that the IRS, despite its reputation for regulatory overkill, has essentially drafted regulations which, it can be argued, coincide with the intent of those who crafted the language "adequate contemporaneous" records in the law. It should, also, be pointed out that the language was included in the law without so much as a minute of hearings by any committee of the Congress! Members of the House justifiably maintain that it was not in their version of the bill, but that it was Senate language which was adopted by the conference on the tax bill. Those in the House who may have known of the existence of the offending language chose to support the conference report on the Deficit Reduction Act of 1984, rather than oppose the bill on this one small provision; but what a provision it turned out to be!

NTDRA's members can understand Congress' desire to discourage the abusive practice whereby a small minority of businesses purchase luxury automobiles and use them for nonbusiness purposes while claiming investment tax credits and accelerated depreciation allowances. NTDRA's members can even understand Congress' desire in the face of mounting deficits to tighten recordkeeping requirements as a revenue-enhancement measure short of raising taxes. What NTDRA's members cannot understand, however, is how Congress could adopt a minor change to the tax code which raises an insignificant amount of revenue, by Treasury's own estimates, while imposing a crushing paperwork burden on most small businesses in this country. Conservative estimates place the cost to business in terms of lost productive man-hours in the billions of dollars annually . . . assuming full compliance with the regulations.

We know of no single provision in the tax code which imposes such a heavy burden on tire dealers and other small business taxpayers. The needed paperwork relief that small businesses have gained in the last four years pales in comparison to the new burden imposed on them as of January 1, 1985. Indeed, this burden is so oppressive that it will encourage tax abuse instead of reducing it. Rather than promoting tax compliance, these provisions will encourage business taxpayers to fabricate records in order to lessen the man-hours of work associated with compliance with contemporaneous recordkeeping requirements.

NTDRA's members are typical of many enterprises in the small business community. Each tire dealer or retreader often will have several business vehicles, usually trucks. On occasion, for business convenience, it may be desirable for an employee to take a service truck home at night because the first service call the following day is closer to the employee's home than to his place of employment. By taking the service truck home, both time and money are saved, and the profitability of the business enhanced.

Regrettably, the regulations which the IRS first issued on October 24, 1984 and amended on February 20th implementing Section 179(b) attack the very profitability that small businessmen and women so fervently seek—and all too often fail to achieve. Under the IRS's regulations, skilled service personnel at our member's dealerships could spend, perhaps, a quarter of an hour each day filling out logs detailing the date the vehicle was used, the identity of the user, the odometer mileage and the destination and purpose of each trip. That could amount to a week and a half of lost productivity per employee per year! Of course, this does not include the productive hours lost by the company's bookkeeper, who now has to tabulate these individual logs on a daily, weekly, monthly, quarterly and yearly basis.

For smaller tire dealerships, we are talking about hundreds of man-hours of lost productivity per year and thousands of dollars. For larger dealerships, we may be talking about thousands of man-hours lost and, perhaps, tens of thousands of dollars lost. Multiply this representative business activity by the total number of affected businesses across the country and it is not difficult to see that the estimates of \$7 billion to \$10 billion in business costs (assuming full compliance) may, indeed, be conservative!

Moreover, the logistics required to maintain those records in order to satisfy the IRS bureaucrats is mindboggling. If a vehicle is used by several different employees, do all the drivers use the same log for the same vehicle, or do they maintain personal logs? If a driver is derelict and fails to log a trip contemporaneously, is it legal to go back the following day or week and fill in the missing trip on the log? What if the driver, in a hurry to service a customer, fails to log a trip and leaves an obvious omission in his records that are then overlooked by the bookkeeper. If the IRS audits the business, is the owner automatically subject to a penalty for negligence under Section 179(c) as the regulations imply? With temporary regulations being

issued and reissued, when is the taxpayer to receive answers to these types of questions?

The adequate contemporaneous recordkeeping provision which you are reviewing today has already spawned a virtual taxpayer revolt. Members of Congress have been inundated with letters from their constituents who are justifiably outraged by this about-face turn from the administration's pledge to free America's business community from the strangulation of regulatory control. Listening to the anger of NTDR's members, I am reminded of Thomas Jefferson's indigation when he wrote in the Declaration of Independence: "He . . . has sent hither swarms of officers to harass our people and eat out their substance."

As a result of this constituent mail and today's hearing, members of Congress should now be aware of the mischief they have inadvertently wrought. Many members already have urged the Secretary of the Treasury and the IRS to provide relief—and the IRS has grudgingly issued temporary proposed regulations to appease the masses. But it is the language of the law that spawned these regulations. Moreover, the relief outlined in general form by the IRS's press release of January 25th—and more completely in the Federal Register on February 20th—clearly misses the mark. For example, the original abuser, whose conduct prompted the new regulation, and who in fact uses his car for business purposes only "half" the time, may now claim an arbitrary 70% business use without having to maintain contemporaneous records! The owner of a service truck who honestly uses his vehicle for 98% business purposes, under the new IRS rules, can claim only 80% business use unless costly and burdensome contemporaneous records are maintained. In many cases the cost of maintaining the required records exceed the additional tax savings to which he is entitled. Moreover, it is our understanding that even with the removal in some cases of the recordkeeping requirement, the employer is still wedded to recordkeeping for purposes of figuring imputed income.

Adjustments in the regulations are clearly not the relief needed, nor the relief sought. NTDR urges the Congress to act swiftly to repeal Section 179(b). Indeed, there are several bills already introduced in both chambers which would provide significant degrees of relief. Examples include: S. 260, H.R. 600 and H.R. 531. It is incumbent upon the Congress to move swiftly to implement an effective legislative remedy. The repeated issuance of new temporary regulations has left taxpayers in a terrible state of confusion as to whether they are required to maintain adequate contemporaneous records. It is essential that Congress clarify the confusion that presently exists.

In summary, NTDR is grateful to you, Mr. Chairman, for bringing public attention to bear on this ill-conceived law. It is a law, which by its very nature, is an unwarranted aggravation to business taxpayers. At best, complying with this provision is difficult; at worst, it is extremely costly—and relatively more costly to our country's small businesses such as independent tire retailers and retreaders who comprise NTDR's membership. Hopefully, your leadership on this issue will extend beyond holding this hearing to review the problems which contemporaneous recordkeeping poses to the small business community. Indeed the testimony heard today surely will spur this committee to repeal Section 179(b) in a forthright and expeditious manner.

STATEMENT OF HON. STEVE NEAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Thank you for the opportunity to comment on IRS regulations regarding contemporaneous auto records, and legislation the Committee is considering to repeal the provision in law which spawned such regulations.

I'm sure that you will agree, Mr. Chairman, that taxpayers need less paperwork, not more. Recordkeeping such as that which is called for in the IRS regulations is a reversal of the progress that this Committee and the rest of the House of Representatives have made in easing the paperwork burden. I believe that deductions for business use of an automobile should be properly accounted for, and I understand the abuse of the law that motivated members of the Committee to agree to the Senate provision that gave us this rule, but I think the regulations go too far.

I have received, and I know other members have received, a flood of mail on the recordkeeping rule. Most are passionate appeals to change the law so we will not, in the words of one Winston-Salem, North Carolina, businessman, "make criminals out of honest taxpayers because there's no way we can or will obey this law." Others have reported to me that they will have to hire additional personnel because some employees are not sufficiently literate to fill out extremely detailed logs, or will

incur substantially higher accounting costs, etc. The point is, of course, that many average businessmen and women will not, or cannot, comply with the regulations.

I urge the Committee's expeditious consideration of legislation to repeal Section 179 (b) of the Tax Reform Act. Thank you again for the opportunity to comment on this issue.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Mr. Chairman and members of the committee, it is hard to believe that three words, "adequate contemporaneous records" could cause such a stir. This was the language that was tucked away in the Tax Reform Act that gave the Internal Revenue Service the license to impose horrendous recordkeeping requirements upon the taxpayers for vehicles and other types of property.

While the recent changes proposed by the IRS to relax the recordkeeping requirements are a step in the right direction, they fall far short of what needs to be done. For that reason, I am supporting full repeal of this new requirement.

The committee has already been presented a substantial amount of background on this matter, therefore I will be brief in my remarks. I would like to reinforce the comments that have been made on behalf of one particular sector that will be hit extremely hard by this rule, that is farming.

Over 2 million farmers filed individual tax returns during 1983. Because of the nature of their business, most, if not all, of these individuals are affected by the recordkeeping requirements. To add this burden to the difficulties now faced by the farm community would be entirely inappropriate. The proposal by the IRS to allow exceptions for certain farm vehicles and provide a "safe harbor" use level still imposes substantial paperwork on the farmer.

To comply with the law, the farmer must first determine if, in fact, they are a farmer under the IRS definition. Then they must determine which of his vehicles are required to have contemporaneous records. After that, they must decide whether it is more profitable to forgo the recordkeeping requirement and take the safe harbor amount or go to the trouble to maintain the records and take in excess of this level. They are, in essence, trying to buy off the taxpayer and presume that they will be coerced into accepting the safe harbor amount and forgoing their rightful deduction in excess of this level.

I have before me several letters which describe the problems this is creating for the farm community. Wayne Winsett of Altus, Oklahoma sent me a copy of his log which he kept from January 14 to January 19, 1985. He made 112 entries and took a substantial amount of time for posting the log. I realize this was made before the IRS announced its changes which reduced the need for this particular type of log. But even if only the personal use of the vehicle were required to be kept, not only for the owner but other farm hands, the paperwork would reduce the time they need to tend to their business of farming.

I hope the committee will move ahead with a change to this rule and report appropriate legislation to the House floor. In the Senate, I will support and pursue efforts to repeal this requirement either through the committee process or on the Senate floor.

RALEIGH, NC, February 27, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. DOWLEY: The above proposed regulations smacks of "Big Brother" as predicted by George Orwell. I cannot imagine anything any more dangerous to one's privacy than these regulations and/or proposed regulations. In addition, aside from the invasion of one's privacy, such rules and regulations, if followed to the letter, would require an individual to spend a tremendous amount of unjustified and unproductive time just recording the required documentation.

The above proposed rules and regulations, along with other changes in the 1984 tax laws and proposed 1985 tax law changes, are detrimental to the American public's best interest. The impact certainly has to be higher taxes for the American people and a slow down in the economy!

Respectfully,

DAVID G. OLMSTED,
Certified Public Accountant.

ONE TAX ALLIANCE,
Arlington, VA, February 14, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Ways and Means Committee:

This should be for determination by the taxpayer.

Any possible overstatement of deductions or credits can better be handled by limiting these to a maximum of 50% of income unless substantiated for a greater amount.

This is a classic instance of redundancy in the tax code. Consideration should be given to eliminating the matter of regulations to implement the code, which in most cases is covered in IRS publications available to the general public.

SAMUEL GREEBERG, *Chairman.*

PIERCE CHEMICALS,
Dallas, TX, February 27, 1985.

Mr. MARTIN FROST,
Member of Congress, Longworth House Office Building, Washington, DC.

DEAR MARTIN: Thanks a lot for your letter of February 22nd in regard to the regulations on the business use of automobiles. Thanks for the opportunity to include my opposition to the present regulations when the House Ways and Means Committee meets on March 5th. The press has pretty well listed all of the problems with these regulations, so I won't try to go over all of them again. Suffice to say, highly unpopular bill like this is—will cause people to fight back in every possible way and certainly will not receive cooperative effort on the part of these concerned.

This is our 50th year in business and we have always employed salesmen and we have always had expense allowances for automobiles. Generally, most everyone has been reasonably honest, but I would guess if these regulations stay in force, it will be a challenge to find other ways of avoiding all of these tiresome and tedious records. One good way of course would be to mail them to your congressman, or isn't that a good idea?

Seriously Martin, I hope your committee will dispose of this silly thing quickly and let's get on with more important work.

Sincerely,

W.H. PIERCE,
Chairman and Treasurer.

STATEMENT OF DENNIS R. WEAASE, COMPTROLLER, POTOMAC ELECTRIC POWER CO.

The Potomac Electric Power Company (Pepco) appreciates the opportunity to present this statement regarding the Amended Proposed and Temporary Treasury Regulations (T.D. 8009) relating to the fringe benefit inclusion and recordkeeping requirements for road vehicles.

Pepco provides retail electric service to 1.7 million people in a 643-square-mile service territory in the nation's capital area, which is composed of the District of Columbia, major portions of Prince George's and Montgomery Counties in Suburban Maryland, and a small portion of Arlington Country, Virginia. To provide this service Pepco owns and operates a fleet of over 1,000 vehicles.

An electric utility, as well as other service companies, routinely maintains a fleet of vehicles solely for business use. One area the regulations do not address and on which the Internal Revenue Service has requested comments is the use of motor vehicles in pools or fleets. Many companies utilize motor vehicle pools of normally homogeneous vehicles for random daily business use.

These vehicles may also be used for non-business purposes during the evenings or on weekends which will necessitate adequate contemporaneous recordkeeping. An inherent problem of the motor vehicle pool concept is that an employee who may utilize a vehicle each day for commuting and/or personal use does not have control of the vehicle each business day while it is in the motor vehicle pool. Thus, the employee will be assigned a different vehicle each evening since tens or hundreds of vehicles are housed centrally in a motor vehicle pool or fleet environment.

The regulations present particular problems in the areas of valuation of this fringe benefit and the recordkeeping requirements for such motor vehicle or fleet use. Under 1.61-2T Q/A-18, Q/A-19 and 1.132-1T Q/A-6, for each employee a separate computation would be required for each vehicle used from a pool of vehicles. Under 1.61-2T Q/A-18(b), four times the daily use would be imputed for each day's

use since a different vehicle is normally used from the pool each day. This methodology clearly will not equitably impute the fringe benefit to an employee who is part of a motor vehicle pool environment.

The regulations should address this problem by first allowing the use of an average fair market value for vehicles drawn randomly from a motor vehicle pool. Thus, each vehicle's fair market value would be determined, the sum of all vehicles fair market values accumulated, and the average calculated.

Second, the recordkeeping requirements for a pool of vehicles should provide for an average business/personal use determination for the pool of vehicles. Thus, each employee would have income imputed based upon the average fair market value as well as the average use of the pool vehicles for personal or commuting purposes. The standard 5½ cents per mile amount imputed for gasoline usage would be based upon actual commuting and personal miles driven by each individual employee. This methodology would allow each employee who uses a motor pool vehicle to have income imputed which more economically matches the value of the fringe benefit received.

The regulations should provide for specific identification as well as a statistical sampling basis for large fleets of 100 or more vehicles. Additionally, if the motor vehicles in the pools are controlled during the day for business use then the recordkeeping for this period of uninterrupted business use should be satisfied by the beginning and ending odometer reading during such period.

We thank you for the opportunity to provide comments on this very important matter.

STATEMENT OF ROGER K. ZUKER, J.D., CHAIRMAN, TAX COMMITTEE, PRINCE GEORGE'S COUNTY (MD) BAR ASSOCIATION

SUMMARY

Under the Tax Reform Act of 1984 (TRA '84) so-called "luxury automobiles" (those costing more than \$16,000.00 and placed in service after June 18, 1984) now have greater restrictions on write off of the cost of the vehicles and on claiming an investment tax credit. In addition, for taxable years which begin after 1984, taxpayers owning or leasing certain vehicles (and other "listed property"—defined below) regardless of the date placed in service will be subject to increased recordkeeping requirements relative to business use in order to claim any expenses in connection with business usage. Tax return preparers must sign returns after receiving written confirmation from taxpayers that such records are kept. In addition, failure to keep such records will be grounds for the negligence penalty to be imposed, in the absence of clear and convincing evidence of no negligence.

Restrictions that are substantially equivalent to the foregoing are placed against automobile leasing expenses of an end-user (not the rental company itself). TRA '84 defines a "passenger automobile" covered by these provisions as any four-wheeled vehicle manufactured primarily for use on public streets, roads and highways, and which is rated at 6,000 pounds gross vehicle weight or less. Excluded expressly from the definition is any ambulance, hearse, any truck or van (under regulations to be issued), and any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire (e.g. cab, moving van, etc.).

"Listed property" which has a business use of not greater than fifty percent (50%) will lose the investment tax credit (ITC), and the cost of such property will have to be written off over the straight line method rather than by the shorter life Accelerated Cost Recovery System method (ACRS). "Listed property" is not only "passenger automobiles" (see above) but also any other property used as a means of transportation, any property of a type generally used as entertainment, recreation, or amusement, any computer or peripheral equipment (unless kept exclusively at a "regular business establishment"—see below) and by means of regulations to be issued by the Secretary of the Treasury later, any property of any type specified in such regulations. A "regular business establishment", is defined in such a way as to exclude an office in the home where expense of an office in the home would not qualify for deduction under the existing (pre-TRA '84) law which continues in force and effect.

BACKGROUND

Prior to passage of TRA '84, costs of tangible depreciable property placed in service after 1980 either in connection with a trade or business, or in connection with production of income from investments, could be recovered in deductions using the

ACRS method rather than the other methods of depreciation such as the straight line method. For example, automobiles under ACRS could be written off in three (3) years compared to five (5) years suggested under the conventional straight line method. Other tangible personal property under ACRS was eligible for five (5) year write off, rather than as the Conference Committee Report (see below) suggests, twelve (12) years. Furthermore, property placed in service as described included not only that which had business or investment use, but also property which could be used for personal purposes, e.g., for entertainment, recreation, amusement, for personal transportation of persons or property. For example, personal home computers are adaptable to business and personal use.

Furthermore, such business or investment use of property was eligible for ITC (generally 6% on automobiles and 10% on other tangible personal property). However 50% of the amount of the credit taken had to reduce the cost basis, for tax purposes, of such property, unless a taxpayer elected to reduce the regular investment credit percentage by two (2) points. Thus, the reduced credit would have been 8% for recovery property other than three (3) year property and 4% for recovery property that is three (3) year property. If the election was made to reduce the regular investment tax credit, then 100% of eligible property would be considered qualified property to which an ITC percentage would apply. See § 48(q)(4)(B) of the Internal Revenue Code (IRC). Other methods of depreciation continued to be in use for property which was purchased and placed in service prior to 1981, such as the straight line method, the double declining balance method, the sum of the year's digits methods, and other "consistent methods" (§ 167(b) IRC), depending on the taxpayers preference and election in the year the property was placed in service. The straight line method of depreciation required that the cost or other basis be reduced by estimated salvage value, and the remainder was then deductible in equal annual amounts over the estimated useful life. Treasury Regulation § 1.167(b)-1. The other methods required either deduction for estimated salvage value, or that depreciation not go below a reasonable salvage value. Treasury Regulation § 1.167(b)-2. A major advantage of ACRS is that salvage value is disregarded in computing the ACRS allowances. In addition, up to \$5,000.00 in total per year of the cost of such assets could be written off directly as an expense and not depreciated. § 179 IRC.

Congress was concerned with high-priced motor vehicles being written off under the ACRS method within three (3) years, while the vehicle essentially retained its full salvage value, and where a more economical vehicle could have been used to essentially provide the same business use. See Report of the Conference Committee, Section L "Miscellaneous Form Provisions" Subsection 3. While § 1250 IRC requires recapture of all the depreciation to the extent of salvage value actually realized in excess of the adjusted basis (cost less depreciation taken), Congress still deemed this to be unsatisfactory.

Congress was also concerned with cost write off of other business property that was used for personal purposes, and particularly where it was not predominately (over 50%) used in connection with a trade or business or for the production of income in investments. Conference Report, id. The House of Representatives initially passed limitations with respect to passenger automobiles costing in excess of \$21,000.00, and reduced tax credits, ACRS and expensing. The Senate version, however, while similar to that of the House, limited the basis to \$15,000.00. Initial passage in both houses prohibited any depreciation or expense write off in excess of these limits. However, it is the understanding of the writer that the West German Government, acting on the prompting of Mercedes Benz, urged the Congress not to take such a drastic step which would be injurious to the economy of an ally of our country as a result of which, Senator Dole in a rather unprecedented move had the staff of the Committee research whether the Conference Committee could on its own initiate additional provisions that were not previously passed by either house. Apparently the results of the research were favorable, because the Conference Committee sent to both houses additional provisions, described below, which were passed, as a result of which, additional depreciation may be taken for automobiles after the first three (3) years, but under the old straight line method. Mercedes Benz seems to have gotten its way since a new five (5) year recovery period in the case of passenger automobiles takes into account the cost or other basis of the vehicle, written off over the straight line method but without regard to salvage value (see below). Congress apparently felt that this curbed the "abuse" even though the straight line method would have otherwise required that estimated salvage value be utilized.

TRA '84 CHANGES

The maximum ITC which may be claimed with respect to any passenger automobile (defined above) is \$1,000.00. The actual credit, if less than \$1,000.00, would either be 6% of the cost of the vehicle if the taxpayer elects to adjust the basis (see above), or 4% if the taxpayer does not so elect.

The ACRS recovery deduction for the first taxable year in the recovery period is \$4,000.00, and for the two succeeding years, \$6,000.00 each (a total of \$16,000.00).

The foregoing limits on depreciation and ITC under TRA '84 are indexed for automobile price inflation, and rounded to the nearest \$100.00.

A "passenger automobile" (defined above) can continue to be depreciated in its fourth and fifth years, on the unrecovered basis, but the straight line method must be used. § 280F IRC. The foregoing limitations are applied before application of rules relating to use not qualifying the property for such credit or recovery deduction, and also before the application of rules with respect to personal use. § 280F IRC.

"Listed property" (defined above) not only loses the ITC, but is ineligible for recovery of cost using ACRS (see above) if business or trade use is 50% or less. Instead, the cost of such vehicle must be written off over the earnings and profits life, § 312(k)(3)(A) IRC, using the straight line method. See § 280F(b)(2) IRC. The Conference Report confirms the lives to be applied as five (5) years in the case of automobiles, and as twelve (12) years with respect to other "listed property", such as certain computers, transportation equipment, etc. See Conference Report, id. Salvage value is disregarded but the half year convention must be used. § 312(k)(3)(A) IRC.

TRA '84 also provides the recovery of all or part of the ITC where during any of the recovery years, business usage drops to 50% or less. § 280F(b)(3)(A) IRC. When the business use test is no longer met, excess depreciation generated by use of ACRS is recaptured as ordinary income, ACRS may not thereafter be utilized, and for the remainder of useful life of an asset, the taxpayer must compute depreciation only using the straight line basis, using earnings and profits lives, but without regard to salvage value. § 312(k)(3)(A) IRC and § 280F(b)(3)(A) IRC. See also Conference Report, id. The recovery of cost of passenger automobiles would be changed to five (5) years instead of three (3) years, and recovery of the cost of other "listed property" would be changed to twelve (12) years instead of five (5) years.

The predominant business use (more than 50%) must be in a trade or business, and not for the production of income through investments, etc. § 280F(b) IRC. "Listed property" which any individual owns and uses in connection with his employment for another is eligible for the ITC and the ACRS deductions only if the employer requires it, in the words of TRA '84, "... for the convenience of the employer and required as a condition of employment . . .". § 280F(d)(3)(A) IRC, and see the Conference Report, id. The conferees indicated that they mean for such terms to have the same meaning as with respect to an exclusion from gross income for lodging furnished to an employee. While the conferees take the position that this means the property must be required in order for an employee to properly perform the duties of his employment, they elaborate by stating that the requirement is not satisfied merely by a statement by the employer that it is so required. However, nothing in TRA '84 or the Conference Report suggests that a provision in a legally enforceable employment contract setting forth that requirement would not have significant evidentiary effect in determining whether the requirement was met. The conferees specifically intend that the requirement apply the principles of *Dole vs. Commissioner*, 43 TC 697, aff'd 351 F.2d 308 (cir. 1965). See Conference Report, id. The Court held in that case cited by the Conference Committee that a motor vehicle furnished to an employee by the employer was only used 50% for business, and that one-half of the fair rental value of the automobile was additional income to the employee.

The luxury car provisions apply to cars put in service, or leases entered into, after June 18, 1984, or cars purchased or leased under binding contracts that were in effect on that date, providing the vehicles are placed in service before 1985.

TRA '84 requires "contemporaneous" recordkeeping for local as well as long distance or overnight travel, and with respect to the business usage of any "listed property". § 274(d) IRC. Both the ITC as well as all depreciation may be lost absent such records, § 274(d) IRC, except that the conferees intend that a reconstruction method may be used in the event records are lost due to circumstances beyond the taxpayer's control, such as in a fire, flood, or earthquake. See the Conference Report, id. Reference is made by the conferees to a taxpayer's opportunity under present law to substantiate deductions listed on a return by some reasonable reconstruction of expenditures, and cited is Treasury Regulation 1.274-5(c)(5). The conferees suggest records be kept "with substantial accuracy", and which reveal the business purpose,

unless this is clear from all the surrounding circumstances. The conferees further state: "With respect to automobiles, the logs recording the date of the trip and the mileage driven for business purposes must be kept."

TRA '84 allows the IRS to issue a regulation exempting small amounts from recordkeeping but whether this will happen is not known. It is significant that Congress provides no other type of exemption (but see below—Safe Harbor Proposed).

All return preparers must properly advise taxpayers of the contemporaneous recordkeeping requirements, and must also obtain written confirmation signed by the taxpayer which certifies that adequate contemporaneous records supporting the deductions and credits exist; but absent such certification, the preparers may not sign the return. § 6695(b) IRC and Conference Report, id.

TRA '84 requires that any portion of the underpayment of tax which is attributable to failure to comply with contemporaneous recordkeeping requirements is to be treated as due to negligence in an absence of clear and convincing evidence to the contrary. § 6653(h) IRC and Conference Report, id. The five percent (5%) penalty is computed directly upon the tax attributable to those deductions and credits disallowed for lack of such records. The conferees further suggest that claiming deductions and credits without any adequate recordkeeping basis may potentially also be subject to the fraud penalty. Conference Report, id. Under the existing law, § 6653(b) IRC provides a fraud penalty of 50% of the amount of the underpayment plus 50% of the interest payable on the portion attributable to fraud. These are provisions in addition to criminal penalties provided in §§ 7201-7203 IRC.

Although the conferees do not mention it, such underpayment if material enough may be the basis for imposition of the "no fault" penalty provided in § 6661 IRC. That section provides that if a corporate taxpayer underpays its tax by the greater of either ten percent (10%) of the amount required to be shown on a return or \$10,000.00, or if a non-corporate taxpayer underpays its tax by the greater of either ten percent (10%) of the amount required to be shown on the return or \$5,000.00, a penalty equal to ten percent (10%) may be imposed, regardless of the intent of the taxpayer, or whether it was due to negligence or fraud, and further that this "no fault" penalty is in addition to any other penalties that may be imposed, i.e., by reason of negligence or fraud, etc. If potential for fraud is realized, and if criminal prosecution results, there are additional criminal penalties as provided by §§ 7201-7203 IRC.

When one or more of these penalties is coupled with interest on the underpayment which at the present is eleven percent (11%) compounded daily, the additional amount the taxpayer might have to pay, together with the underpayment of tax resulting from the loss of the deduction and/or credit would in all probability be quite formidable. The amount to be paid could be very material even if there is no finding of negligence or fraud. The array of weapons available to the Commissioner of Internal Revenue to penalize a taxpayer for not keeping records has never been as great in federal tax law as it is today.

SAFE HARBOR PROPOSED

Not only because of the severe penalties and other punitive measures available to the Commissioner of Internal Revenue for failure to keep records properly concerning use of automobiles and other "listed property", but also because it creates a very significant additional burden upon all taxpayers who utilize such property in a trade or business, and creates additional administrative burdens upon the auditing staff of the Internal Revenue Service, we suggest that an approach should be taken by way of new legislation, to modify or soften these recordkeeping requirements in those situations in which it makes good sense to do so. For example, a taxpayer who travels the same routes day after day, or on some fixed schedule, should not be required to endlessly repeat the same information in his diaries, logs and other records. Furthermore, taxpayers who reduce the potential for tax abuse by having or maintaining adequate property and facilities for personal transportation, entertainment, etc., should not be required to maintain as detailed a set of records as those taxpayers who combine both business and personal usage of an item of listed property.

For these reasons we propose, and urge that the reader of this article support, the introduction and the passage of new legislation to provide a "safe harbour" from the new stringent recordkeeping requirements. As but one example, we suggest that where a taxpayer:

(a) Maintains one or more personal vehicles in addition to a vehicle utilized in business;

(b) Either does not deduct any commuting expenses to and from work or reimburses his business for such commuting expenses out of his own pocket; and

(c) Is engaged in a trade or business which by its nature and/or historically requires utilization of a motor vehicle in the trade or business as an ordinary and necessary expense of same:

Then as long as an appointment book, calendar or a similar record indicates with sufficient clarity appointments and other engagements outside of the principal office, the taxpayer should not be required to maintain mileage records at all.

A similar type of modification should be fashioned in lieu of TRA '84 recordkeeping requirements with regard to the other "listed property".

CONCLUSION

For years many taxpayers fail to maintain contemporaneous records of automobiles and other expenses, choosing instead to reconstruct such records if and when they were audited. The reader is urged to read carefully each of the above sections once again, carefully considering the marked change in federal tax philosophy now expressed by the Congress.

Not only is a greater degree of provable business usage now required in order to enjoy deductions and credits for the use of such property in a trade or business, but the Congress has quite clearly taken the substantiation requirements previously imposed on only overnight travel, and all entertainment, to new heights of "taxpayer punishment" in these new areas as well. This is more unfortunate for it shows a potentially alarming trend on the part of Congress to make detailed, burdensome recordkeeping an additional price in terms of time expended, which means less productivity in the business of the taxpayer. Those taxpayers who in past years had declined to deduct entertainment expenses, even though valid, upon a firm conviction that the great loss of productivity in additional recordkeeping far outweighed the tax advantages, will suffer more anxiety as more and more ordinary and necessary business expenses become the subject of paperwork nightmares. Perhaps the philosophy of the federal government in enacting these provisions, while at the same time enacting more paperwork simplification legislation, is that the government should over the years have less and less paperwork while private enterprise should incur more.

STATEMENT OF INSPECTOR EDWARD J. SPURLOCK, COORDINATOR, PUBLIC SAFETY COALITION

My name is Edward J. Spurlock and I am the Commander of the Repeat Offender Project of the Washington, D.C. Metropolitan Police Department. I am President of the Police Management Association (PMA), a nationwide membership organization of police managers and civilians with an interest in professionalizing policing.

This statement is made on behalf of the Public Safety Coalition, a recently formed coalition of national, state and local law enforcement organizations. Members include the Police Management Association, National Association of Police Organizations, Police Executive Research Forum, National Institute of Policing, Fraternal Order of Police, Police Association of the District of Columbia, National Sheriffs' Association, National League of Cities, the United Federation of Police, and the Command Officers Association. The Coalition is representing well over one hundred thousand (100,000) public safety employees throughout the United States. A summary of organizations participating in the Public Safety Coalition is to be found at the end of this statement.

The Coalition was formed to address the important law enforcement and public safety concerns generated by the Internal Revenue Service's recent interpretation of § 531 of the Tax Reform Act of 1984 relating to the taxation of fringe benefits. The IRS' proposed and temporary regulations now appear to include police department "take home" vehicles as "fringe benefits" taxable to the police officers who take the vehicles home. (See 50 Fed. Reg. 747, January 7, 1985; and 50 Fed. Reg. 7038, February 20, 1985).

The IRS' interpretation is the opposite of what Congress apparently intended under the statute, which was to treat the use of a "take home" police vehicle as a "working condition fringe" under Code § 132(d), excluded from taxation to the police officer.

The Coalition is writing this statement in order to bring to the attention of Congress the threat which the IRS' interpretation is presenting to many state and local law enforcement programs around the country involving take home police vehicles.

Following a successful program in Indianapolis, Indiana, in the late 1960's, increasing numbers of progressive state and local governments have instituted programs which are known generically as "take home cruiser programs." While these programs can be found in great varieties, a common factor is that the officer drives home a police vehicle which is equipped with a police radio rather than driving a private car, and is encouraged to drive the police vehicle within the jurisdiction for his off duty use. The vast majority of the vehicles taken home under such programs are marked as police vehicles and are readily recognizable as such by the general public. Such use of a police vehicle is a direct and important benefit to the police department and to the public, as will be seen below.

A primary public benefit of these programs involves the proliferation and increase visibility of police vehicles on the street. It has been estimated that such programs triple the number of police vehicles on the street. These programs have been effective in crime reduction and have led to increased public perception of safety in our communities. The deterrent effects of preventive patrol, a scarce and expensive public resource, are multiplied under the take home cruiser programs.

Virtually all of the roughly 14,000 police departments in this country require a 24 hour a day, seven day a week commitment from their officers. That is, the officers are required to intervene in crimes in progress they may see, even if the officers are "off duty." In the District of Columbia, for example, the off duty officer can be prosecuted for not taking appropriate police action.

For a police officer to be on the road in a police vehicle rather than in the officer's private car serves vital law enforcement interests. The police vehicle is equipped with radio communications linking the officer to headquarters. The "off duty" officer who sees a crime in progress, and who, let us remember, is obligated by the department to respond, can radio headquarters to summon additional officers if he sees the need for it while he is in the take-home police vehicle. This increases the officer's own safety, that of the public, and the effectiveness of the police response.

It can readily be seen that police vehicles are in a class by themselves as far as the alleged "benefit" to the officer from use of the vehicle for commuting and other personal purposes is concerned. Use of such vehicles is accompanied by serious law enforcement obligations and risks that are not present in other organizational vehicles.

We cannot believe that Congress intended through the fringe benefits tax statute to threaten these important and innovative programs which help to safeguard the public. Accordingly, the Coalition urges the addition of an amendment to §182 of the Internal Revenue Code specifying that use of a government owned vehicle used by law enforcement personnel pursuant to governmental or law enforcement guidelines or requirements is a "working condition fringe" under §182(d) of the Code.

SUMMARY OF PUBLIC SAFETY COALITION ORGANIZATIONS

Police Management Association (PMA), 1001 22nd Street NW., Suite 200, Washington, DC 20037, (202) 833-1460 Contact: E. Roberta Lesh, Executive Director.

National Association of Police Organizations (NAPO), 3101 South Street, NW., Washington, DC 20007, (202) 337-7511 Contact: Ira Lechner, Legislative Counsel.

Police Executive Research Forum (PERF), 2300 M Street, NW., Suite 910, Washington, DC 20037, (202) 466-7820 Contact: Gary Hayes, Executive Director.

National Institute of Policing (NIP), 2300 M Street, NW., Suite 910, Washington, DC 20037, (202) 466-7827 Contact: Mayor Thomas H. Cook, Chairman.

Fraternal Order of Police (FOP), 5613 Belair Road, Baltimore, MD 21206, (405) 523-1425 Contact: Richard A. Boyd, National President.

Police Association of the District of Columbia, 2701 Pennsylvania Avenue, SE., Washington, DC 20020, (202) 582-4620 Contact: Patrick O'Brien, President.

National Sheriffs' Association, 1450 Duke Street, Alexandria, VA 22314, (703) 836-7827 Contact: L. Cary Bittick, Executive Director.

National League of Cities, 1901 Pennsylvania Avenue, NW., Washington, DC 20020, (202) 626-3000 Contact: Laurie Micciche, Legislative Counsel.

Command Officers Association, Prince George's County Police Department, 601 S. W. Crain Highway, Upper Marlboro, MD 20772, (301) 249-7100 Contact: George Robinson, President.

United Federation of Police, 117 C Street, SE., Washington, DC 20003, (202) 546-9100 Contact: Robert D. Gordon, Legislative Representative for Federal Legislation.

STATEMENT OF HON. JAMES H. QUILLEN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF TENNESSEE

Mr. Chairman and members of the committee, I appreciate this opportunity to urge you to take prompt action to repeal the so-called "contemporaneous record-keeping" provisions of last year's tax bill regarding the use of automobiles and other property used for business purposes. I have sponsored a bill regarding the use of automobiles and other property used for business purposes. I have sponsored a bill, H.R. 826, which would repeal these provisions and I ask the committee to support this effort.

As you know, the Internal Revenue Service has been backpedaling on its own absurd recordkeeping regulations since they were written last year. Each new attempt by the IRS to waterdown and make less objectionable the burden placed on businessmen and businesswomen only serves to demonstrate that this section of the tax code is impractical and should be repealed.

The original IRS rules required a diary or a journal with separate entries made every time business property, such as a car or truck, is used for any purpose. The entries had to include the date of use, the name of the user, the number of miles driven or the amount of time used, and the specific purpose of the use. Any personal use of the car, for example, would also have to be recorded in detail at the time of use.

This sort of overkill is bureaucratic nit-picking and government red tape at its worst. Really, the hard-working businessman and businesswomen, the farmers, the salespeople, the electricians, the plumbers and many others, do not have the time to keep such needless records for the government tax collectors. They are too busy trying to earn a living and the government should not be permitted to put them through this unnecessary ordeal.

The outcry of these IRS regulations have brought about is justified. The IRS is attempting to impose an unneeded and time-consuming hardship on American citizens at a time when the majority of taxpayers are seeking ways to streamline the tax structure rather than complicate it.

The solution lies at hand. I ask the committee to act to repeal these provisions of last year's tax bill and return to the familiar standard of "adequate records or sufficient evidence corroborating his own statement." This previous standard has served us well for many years. It can continue to serve us well in the future.

CHICAGO, IL, March 6, 1985.

JOSEPH K. DOWLEY,
*Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.*

In addition to being an "Enrolled Federal Tax Accountant", I am the Administrator of the Enrolled Federal Tax Accountant Institute, which is the Accrediting Body who license practitioners in the Federal Tax Practice Profession who desire to be Authorized and duly Licensed by the Institute to be designated to use the Service Mark: "Enrolled Federal Tax Accountant".

I agree with your Chairman Dan Rostenkowski that many, not some, small business persons with legitimate business expenses will be unduly burdened by the new substantiation requirements in the 1984 Tax Reform Act.

I also agree with Chairman James Abdnor of the U.S. Senate Appropriations Subcommittee that even the newly-revised proposals are too narrowly drawn to eliminate the bookkeeping burden for many businesspersons and farmers who continue to seek repeal of the Revised Regulations and Code Section.

It seems quite obvious to me that the newly-revised temporary and proposed IRS Regulations should not go into effect until January 1, 1986, since it is not possible to make these regulations retroactive to the start of 1985. Nor is it fair to do so.

Kindly acknowledge receipt of these comments and mail me two copies of the Printed Record as soon as they are available.

S.A. RISH, E.F.T.A.

Attachment.

THE ENROLLED FEDERAL TAX ACCOUNTANT

WHAT HE/SHE IS AND WHAT HE/SHE CAN DO FOR YOU, THE TAXPAYER

The Department of the Treasury, Internal Revenue Service, recognizes only three categories of tax practitioners who may represent all taxpayers through all of the

levels, including the District Conference and the Appellate Division. These are: attorney, qualified certified public accountants, and enrolled agents.

An "EFTA" is an Accredited Member of the National Association of Enrolled Federal Tax Accountants, which is the only national organization that limits its membership to those persons who have passed the written special enrollment exam of the IRS or to others who have passed the written exam, for non-lawyers, who desire to be admitted to practice, before the Tax Court of the United States. An "EFTA" is a Federally-licensed professional tax practitioner who is entitled to practice, as an agent of a taxpayer, before the IRS. He has demonstrated special competence in Federal Tax Matters, by written exam administered by the IRS or the Tax Court of the United States.

ROGERS ASSOCIATES MECHANICAL SALES,
DeSoto, TX, March 1, 1985.

MARTIN FROST,
Congress of the United States, House of Representatives, Longworth House Office
Building, Washington, DC.

CONGRESSMAN FROST: I would first like to thank you for answering my letter concerning IRS regulations governing records-keeping for the use of automobiles.

I must admit that there is a need for modification of not only this law, but many others which have allowed flagrant abuses of our tax system. However, we do not need such revisions that would not only increase the amount of non-productive paper work but also increase the number of IRS employees, etc. to enforce or verify these records. Also, this would further increase the cost of Government, which is already way beyond our control.

I believe that a simple solution can be found. I think that the \$16,000.00 limit is fair. Also, company cars that are furnished to employees who do not use the car for business purposes should be shown as income without tax deduction benefit. However, those who use their automobiles in service, sales, etc., regardless if the vehicle is taken home each night, should not suffer because of others. As you know in our area, businesses are sometimes very far apart, even within a Metroplex area, making it much more feasible for employees and owners to go directly from home to service calls, job calls, etc., before going into the office, if at all. Thus reducing the cost of operation.

Thanks again for listening and responding.

Very truly yours,

JERRY P. ROGERS.

P.S.—I would also encourage you to help reduce the National Debt by cutting both Domestic spending that Pres. Reagan has proposed and the Military budget in areas of Foreign Aid and wasteful government specifications of contract items. Let private industries sell the Government competitive weapons and materials which they have developed with their own R & D monies. This would reduce fraud and encourage growth in the private sector.

STATEMENT OF HON. ELDON RUDD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. Chairman, members of the committee, I thank you for the opportunity to appear before you today to share my concerns about the "adequate contemporaneous recordkeeping" requirements of last year's Deficit Reduction Act.

Like my colleagues and, I am sure, like all of you, I have been inundated with complaints from my constituents about these new rules, and rightly so. These automobile reporting requirements are unnecessarily burdensome, costly and time-consuming. Let me share just some of the adjectives used time and again by businessmen in my district in describing the new rules—"outrageous," "extremely harsh," "a paperwork nightmare," "pure harassment."

The general manager of a glass company in Phoenix described it as interfering "with business to the extent of loss of man hours to the detriment of all of us."

The president of a nursery products company cited it as "just one more example of an ever increasing expenditure of time and resources by the American business person, not to generate a better American economy, but to feed the insatiable appetite for reports and forms by the paper hungry Federal bureaucracy."

The owner of an employee benefit consulting firm observed, "the lawmakers have again successfully managed to dig even deeper into our pockets."

And a representative of a land exchange company declared, "it is costing the American economy millions of man hours of productivity loss daily."

Indeed, at the Small Business Committee hearing on February 8th, more than 20 witnesses described the loss of productivity on account of these new requirements. It is estimated that the cost imposed on business and consumers as a result of the requirements will be some \$7 billion, yet only net the treasury slightly more than \$100 million.

These problems will not be rectified by the changes announced recently by the Internal Revenue Service. The proposed modifications simply carve out narrow exceptions to the requirements while leaving whole segments of affected taxpayers unjustifiably burdened by the new rules.

While improved compliance with tax law is clearly an important objective, the increased paperwork requirements of this change will run counter to our efforts to ensure regulatory relief for our citizens. We would be fooling ourselves to think that imposing these burdensome requirements will improve compliance. Most likely, they could well result in the falsification of records by persons trying to comply, or discourage individuals from using the tax credit or deduction altogether. The new recordkeeping requirements will be injurious to the economy, particularly to small business, discouraging business initiative and imposing new costs.

As a cosponsor of legislation to repeal these onerous new rules, I strongly urge the committee's early action to relieve American taxpayers of this unnecessary and costly burden.

CHATTANOOGA, TN, March 1, 1985.

JOSEPH K. DOWLEY,
*Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.*

DEAR MR. DOWLEY: After President Reagan's recent re-election in November, 1984, my spirits were raised for the American economy in general for a brief period of time. I surmized that with such a mandate, surely congress could get their act together with such strong leadership that President Reagan offers and put the economy on a long term up-swing. I had hoped that congress would put their house "in order". After listening to the recent hearings about the budget, I once again have become dismayed. It appears that there are certain "sacred cows" that are not going to be touched. Congress discourages me because it appears that nothing ever seems to be accomplished. It appears that certain programs are untouchable and these are the types of programs that cause the deficits.

When it is all said and done, it is not the rich or the poor that pay the taxes, it is the average working American family that abides by the time-honored "work ethic". I own a small to middle size corporation, employing ten people. I see between sixty and eighty patients per day and work an average of a twelve to thirteen hours per work day, five days a week. I pay my taxes on time and provide jobs for ten talented people who work in my office. I pay city, county, local and federal taxes, and provide a valuable (or at least I think) resource to our local community. I am a typical American that feels that hard work will overcome adversity and eventually will pay off.

In my business-type, logical way of thinking, I would surmise that if I am one of hard working Americans who is paying all these bills, then I ought to be given some consideration in doing my job. This is probably a naive way of thinking. If citizens are productive then they ought to be given incentives to keep doing the hard work and productive work that keeps this economy going. For this reason, I was absolutely amazed at the recent Internal Revenue Services ruling concerning the accounting for the use of business cars in the U.S. for either individuals or corporations.

Since I am a corporation, I do have a business vehicle which is used primarily for business through my office. It appears that if we are to adhere to the new rulings, I will spend more time keeping records for my car than I will be producing income in my office. It is outrageous to think that every time you step into your automobile that you need to spend that much time accounting for your mileage. All of us who honestly use business vehicles during the year simply declare a percentage and pay part of it personally and part of it through the business. This is declared on our income tax as a very simple procedure. With all the scandals that seem to erupt daily concerning government overruns, wasted money, etc., it appears to be ludicrous to penalize the average hard working business man because of the business use of an automobile. In fact, this ruling would be impossible to police, and I think that most people in congress know that. Why put the burden on the guy who is producing the income? Give us guys a break and please realize that we are the ones

producing the income. We are probably working much harder than most of the people who receive money from the federal budget. I know the "silent majority" is a cliché, but it actually is true. There are millions of us who are honest, hard working people who feed our families, raise and educate our children and go to work every day and pay our taxes. I would request that the government just leave us alone and we will continue doing what we have always done honestly all of our lives. Just don't "bug" us with the paperwork that requires our time away from already extremely over-burdened business schedules. These records are impossible to keep and eventually will become almost unenforceable.

Thank you for your time and I hope that my common sense approach will have some small (hopefully not insignificant) impact on the decision that effects millions of hard working people.

Sincerely,

STEPHEN M. SAWRIE, D.D.S., M.S.

SBH CORP.,

Palo Alto, CA, March 21, 1985.

Mr. JOSEPH DOWLEY,

Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. DOWLEY: I am in opposition to the recordkeeping requirements for business use of automobiles. These requirements impose an unfair burden on small businessmen such as myself and my colleagues in our trade association, Auto International Association (AIA).

The requirements are burdensome because (1) they are difficult to interpret, (2) compliance is extremely time consuming for a small business, and (3) the cost of compliance is greater than the deductions to which we are entitled.

I urge you and the Committee on Ways and Means to take immediate action to repeal contemporaneous recordkeeping requirements.

Very truly yours,

STEPHEN B. HERRICK, *President.*

WAUKESHA, WI, February 26, 1985.

Mr. JOSEPH K. DOWLEY,

Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth Office Building, Washington, DC.

DEAR MR. DOWLEY: I am writing in regards to your meeting on Recordkeeping Rules. I would like my letter read at your meeting.

I am an owner of a small business, our sales in 1984 were \$865,000, on which we lost \$20,000. The salary my partner and I took was only \$13,000 each; and the corporation could not even afford that. We own and operate a beauty supply company and several beauty salons.

We have three company vehicles which are utilized by my partner, another sales person, and myself. Both my partner and the salesperson will end up taking the 30% as personal income, so as not to have to keep the horrendous records required by the revised IRS rules recently released.

I am on the road about 40% of my time, and the remainder is in the office. As I understand the revised rules, I will be expected to maintain a record, listing personal VS business. This requirement takes one to two hours of my time per week. I already work 60 plus hours per week just to pay my bills.

I would like to ask you people several questions. What are you allowed in your budget for auto expense? Are you honestly keeping the mileage records as is required of me? Do you actually keep the records, or do you have a staff person handle it?

Your budget becomes rather open ended as you can just legislate more dollars to cover the cost of someone's time. When you are in business and the only money available is your own, you have to make do or go out of business.

I feel the entire program is excessive in its paperwork requirements. The amount of tax dollars you can possibly receive cannot cover the cost of this program to business people. It cannot even cover the cost of the time you are spending debating its merits!

If you want more dollars raise the tax rates; it would cost less in the long run.

I really would like a response as to how many senators and congressmen personally keep these records and recap the record themselves.

If you people continue as you are; raising taxes, adding paperwork, and expense to business, and spending in excess of the amount you collect; you will drive me and tens of thousands like me out of business. Then who will you harass? You may consider this a drastic statement. But, consider this; how long could you live on my salary?

Losing respect,

RAYMOND F. SCHEIFEN, *Accountant.*

SHEET METAL & AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION,
Vienna, VA, March 12, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Ways and Means Committee, House of Representatives, Washington, DC.

DEAR CHAIRMAN ROSTENKOWSKI: As President of the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), representing 2,500 construction contracting corporations nationwide, I want to submit the attached testimony for the March 5 hearing record, expressing our strong opposition to the Internal Revenue Service's temporary proposed regulations regarding multiuse business vehicles. From a small business perspective, and SMACNA represents mostly smaller contractors the regulations would be far too burdensome. The proposed IRS rules and temporary regulations would clearly pose a severe hardship to firms in our industry. Therefore, SMACNA seeks your support for repealing the "contemporaneous" recordkeeping requirements and the tax preparer penalty set forth in the Tax Reform Act of 1984.

While the IRS has eased the original temporary regulations proposed to implement the recordkeeping requirements, the newly published changes fail to resolve the difficulties created by the original recordkeeping regulations. Therefore, legislative action to repeal the requirements that IRS has misused in issuing the regulations is the only solution.

In closing, we would appreciate all the support you can provide in lifting the regulatory burden from the over-regulated small business construction contractor. Please feel free to contact my office or Stan Kolbe, SMACNA Director of Governmental Affairs, if we can assist you in repealing these unrealistic, unworkable and unnecessary regulatory requirements.

Sincerely,

LEE G. KARL, *President.*

Enclosure.

Mr. Chairman, members of the House Way and Means Committee, the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) appreciates this opportunity to submit testimony on an issue of vital importance to the construction industry, indeed, all small business. SMACNA represents 2,500 construction contracting corporations nationwide, concentrating on commercial and industrial construction projects. While SMACNA consists of both large and small companies, both of which will be harmed by the impractical IRS temporary proposed regulations, a majority of our members are small businesses with a great concern for the problems of over-regulation, excessive paperwork and other threats to improved productivity. Overwhelming opposition amongst our members to the Internal Revenue Service vehicle regulations can be found in all corners of the nation in businesses of every size. Therefore, SMACNA urges continued Congressional support to repeal section 1-19(b) and (c) of the 1984 Tax Reform Act.

BACKGROUND

On October 29, 1984, the Department of Treasury and the IRS issued proposed the temporary regulations defining recordkeeping requirements for business vehicle use, to implement certain provisions of the Tax Reform Act of 1984. The scope of the regulations encompassed automobiles, trucks, vans and specific investment tax credit treatment for each based upon the use by the owner/operator. Specifically, Congress enacted language in the 1984 Act, under section 274(d), requiring taxpayers in justify travel and entertainment expenditures through adequate, contemporaneous recordkeeping.

On January 1st, the requirements of the temporary IRS regulations took effect describing the necessary documentation the taxpayer must be prepared to provide the IRS to qualify business vehicles for tax purposes. These regulations require a small business to maintain a log or diary detailing business use of all vehicles in its possession designated as business vehicles. Briefly, the following information is to be

entered into the log at the time of vehicle use: (1) date; (2) name of the user; (3) number of miles or amount of time vehicle in use; and, (4) exact purpose.

REVISED REGULATIONS

On February 20, IRS revised earlier regulations yet left in effect most of the inequitable language that characterized the original regulations.

Exceptions to the original recordkeeping rules now apply in four situations:

Operators of farm vehicles have the options of keeping track of nonbusiness use only of keeping no records and assuming the vehicle is used for business 80 percent of the time.

No records are needed for company vehicles that are not used for any personal driving except, for example, to go to lunch.

No records are needed for company cars whose only personal use is by employees driving to and from work, provided that employees account for the value of that use each work day. (Employers are required to withhold 20 percent of the cash value of this benefit each quarter.)

Taxpayers who spend most of their day behind the wheel on service or sales calls can qualify for a deduction by keeping track of just their personal trips, or they may keep no records and assume that the car is used for business 70 percent of the time (80 percent of the time for trucks and commercial-use vehicles).

Single entries for periods of uninterrupted business use or for an extended trip away from home will be permitted, says an IRS spokesman.

There are several aspects of the law SMACNA still finds unacceptable.

The rule changes do not provide an adequate definition of what constitutes "sales and service" for purposes of recordkeeping requirements;

The revisions do not deal with use of computers or airplanes;

Business people not wanting to settle for the assumption of 80 percent business use in the absence of detailed records would still have to maintain such records to provide higher use;

The revised rules set one type of business against another by failing to recognize that people doing very similar jobs might have sharply different patterns of business use of vehicles. This is particularly true for the construction industry.

The revised rules set one type of business against another by failing to recognize that people doing very similar jobs might have sharply different patterns of business use of vehicles. This is particularly true for the construction industry.

While this requirement may seem satisfactory and workable to those whose business is thinking up regulations, in the real world of construction, and especially for small business construction firms, the log requirement is unfair burdensome and grossly impractical. In fact, it becomes such a barrier to compliance with the law that, if implemented, these businesses undoubtedly will end up losing substantial legitimate deductions through the sheer impossibility of compliance under these unduly restrictive regulations. Given the extremely low level of profitability in our industry, generally, in the last few years, it is probable that the difficulty in complying with these rules could result in a major increase in contractor business failures. 1984, without these burdensome regulations, was a record year for construction industry business failures according to Dun and Bradstreet Corporation. Further red tape is the least important "favor" IRS can do for small business.

With limited office resources, small business contractors already are overburdened by regulatory paperwork requirements in regard to wage and tax records, safety regulations, pension law, affirmative action rules, preferential procurement quotas and a host of other totally unproductive federally mandated reporting chores.

COST OF COMPLIANCE

Small businesses, generally, are least able to understand these new requirements and to afford the costs of the added recordkeeping. Furthermore, these paper-generating provisions are interrupting normal business operations and are unlikely to result in an appreciable increase in tax revenues. We join others in the business community that question Treasury estimates of \$105 million in increased revenues in fiscal year 1985, as it is already illegal to deduct expenses for the personal use of such items as automobiles and computers. In addition, this revenue estimate must be balanced with what it will cost businesses to comply with these requirements. A conservative estimate by the National Society of Public Accountants of \$500 a year for each of this nation's 14 million small businesses, would indicate a cost of close to \$7 billion a year for this segment of the business community alone. An even more conservative estimate of \$100 a year for each of the country's small businesses

would indicate a cost of \$1.4 billion a year—still far in excess of the Treasury's estimates of increased revenues.

CONSTRUCTION VEHICLES

The vehicles utilized by the sheet metal and air conditioning contractors are service vehicles, outfitted for construction. Often these vehicles are specifically designed for particular types or aspects of the construction process and have customized designs, including tool compartments and mechanical attachments. They are obviously not outfitted for recreational or family use or casual personal errands.

Also objectionable to the construction industry is the IRS requirement that service vehicles be parked on company property after-hours. A serious problem arises when contractors offer maintenance or emergency service 24-hour a day. This demands that the contractors' employees have constant access to fully equipped company vehicles. To comply with the IRS requirement employees would either travel back to the business office for appropriate equipment prior to driving to the emergency site or be charged for personal use as the result of taking the vehicle home with them. The other alternative is the termination of all heating, ventilating and air conditioning emergency service. Clearly, none of the above options is as practical or cost-effective as the current method of allowing emergency service employees to take vehicles home with them. To penalize the contractor because his business requires providing on-call, cost-effective emergency service makes little sense. Further, to characterize this type of business service as commuting or tax evasion, as the IRS has, is without basis.

Beyond the unfairness of the proposal to small business construction contractors, Congress should examine its flawed logic concerning vehicle and equipment security. In most cases business employers require employees to take vehicles home to safeguard the vehicle and the highly valuable contents. The alternative is to park the vehicles and expensive cargo in lots where vandalism is the rule rather than the exception. To require employers to purchase new parking facilities, hire security personnel, and substantially increase insurance coverage to correct an abuse that doesn't exist is impossible to justify. While there was no paperwork reduction or regulatory flexibility analysis done on the regulations, it appears that even a common sense analysis was ignored.

THE IMPACT OF IMPRACTICAL REGULATIONS

Excerpts from letters written by contractors should illustrate the unrealistic nature of these regulations. One of our contractors wrote in a letter to his Congressman, "We are still engaged in a business that uses vehicles that in no way could be considered to be personal, by any stretch of the imagination. These vehicles, if kept at our place of business overnight, would be subjected to the possibilities of theft and vandalism, not to say anything about the added expense to the consumer, as a result of the individual not being able to be dispatched directly to the job from his home. This is particularly true, in light of the fact that we advertise regularly, that we provide 24 hour emergency service. Naturally, one or more of our people are on-call day and night, and any number of them are subject to "call out" in the middle of the night to take care of emergency situations. This has been particularly true in severe winter conditions, such as we are experiencing right now.

To suggest that our fellows leave their trucks at the place of business, where they may have to drive through severe snow and other icy conditions to get to our shop and then hoping that the vehicle will still start, sending that vehicle and the serviceman to a homeowner, whose pipes are frozen, or whose furnace will not heat any longer, is adding a significant cost to the charges we must make to the consumer. In an era when the consumer already perceives us as being overpriced many times, we feel this additional financial burden is too much to ask."

Another small business contractor wrote the IRS, "The published regulations, by IRS, providing guidance in compliance to the Tax Reform Act of 1984, and the Tax Reform itself, as it related to deductibility of company vehicles, has already imposed a severe and punitive penalty to my company, a small business by any definition. I am a plumbing, heating, air conditioning and sheet metal contractor.

The very nature of our business demands that we have company vans and trucks to conduct our business. Often these trucks and vans, depending on how they are fitted with special lifting devices, etc., exceed the limits imposed by the Act. By no means could these vehicles be used personally by anyone in our business. One visit to our shop would convince the most skeptical believer."

Another letter details why storing vehicles on business premises is impractical and costly, "It is rarely practical for vehicles to be stored at our shop, which is remote from the areas most of our employees live. It is impractical for two reasons:

(1) Left on our premises, we have no economical means to protect them against theft, vandalism, or other perils. If they are stored overnight at the employees home, then we can at least minimize our exposure, since a thief or vandal would probably only strike at that location and not twenty or twenty-five. This, of course, reduces our insurance premiums by keeping our experiences low.

(2) Most of our employees are subject to call 24 hours per day, and often are called out in the middle of the night to solve a plumbing, heating or air conditioning problem. Many businesses and families depend on our 24 hour service and we have a reputation in our community of responding rapidly to emergency calls. If we had to store our vehicles at our shop, it not only would cause a great deal of difficulty in responding to those calls in a timely and efficient manner but, would add considerable costs to the customers invoice."

CONCLUSION

Construction subcontractors in the sheet metal and air conditioning industry have not complained in the past when the prior law required adequate substantiation of expenses. Previously, service vehicles used in an obvious business situation only demanded invoices for customers serviced or visited and some record of sales to fulfill the adequate recordkeeping requirement justifying business use. The new IRS requirement, aimed at clarifying the gray areas of the old law, goes far beyond what is necessary and has created the paperwork nightmare under examination by the Committee.

As mentioned earlier in our remarks, the proposed temporary regulations for recordkeeping could cost businesses over \$7 billion to eliminate the \$110-140 million in "gray area" abuses that IRS claims exist. The \$7 billion includes only the estimated paperwork and ignores lost productivity, higher insurance rates, parking lot acquisitions, increased security expenses, and many other costs directly associated with the regulations.

Due to the exorbitant increase in business paperwork and associated costs, we feel the IRS regulations must be repealed. When combined with the reduced efficiency and productivity that would result for already over-regulated small contractors, we see no other message to send the IRS. The goals of this Administration and Congress are to get government off the back of business and reduce paperwork and red tape. We agree. Therefore, Congress and this Committee should repeal the IRS regulation and include legislative language preventing situations similar to this one from occurring again.

Thank you.

STATEMENT OF SHONEY'S, INC.

Shoney's, Inc. operates and franchises a chain of 1,138 restaurants and 18 Shoney's Inns in 32 states. In connection with these operations, the Company owns approximately 475 automobiles which are provided to company employees for their use in performing assigned duties. The recently released temporary treasury regulations regarding fringe benefits, and specifically employee's use of company provided vehicles, is extremely burdensome in the Company's opinion.

The American system of taxation is generally based on voluntary taxpayer compliance. The new regulations place a heavy burden on employers to monitor tax compliance rather than relying on the voluntary compliance of the employees. The new regulations have caused significant bookkeeping problems with an increased time commitment by both management and clerical personnel.

The Company commends the treasury for the recent easing of regulations relative to Company cars. However, we believe additional changes or repeal would be proper at this time. The repeal would place the burden on individual taxpayers to comply. Additional changes we might recommend absent a repeal would include a flat rate for personal use value for persons not involved in numerous business stops during the day. An example would be an arbitrary 30% personal use percentage with a flat dollar per day commuting value.

STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. Chairman, Members of the Committee, thank you for this opportunity to present testimony before you today.

I am here as a Chairman for the Congressional Rural Caucus, as a spokesman for the farmers and small businesses in my congressional district and finally, as the author of H.R. 707 which has been referred to the Committee. My bill, H.R. 707, would repeal the contemporaneous recordkeeping requirement for automobiles and trucks. These hearings serve the important purpose of giving these who have been so dramatically affected by this new law and these new rules the chance to have their complaints heard and then, finally, have the imposition of these new rules fully considered on their merits.

Rural areas are hard hit by the contemporaneous recordkeeping requirement because of the distances involved in routine travel, because of a lack of alternative means of transportation and because of the nature of the work they do. Farmers, for example, must use their trucks to a great extent just getting from point to point on their own farm. Farmers have their cars and trucks available at home but their home is their business. A number of chores normally associated with non-business activities are business related in a farm sense: trips to town to pick up parts, seed and groceries for the family and the hired hands. The trips defy separation into business and non-business purposes. To be sure, the 70 percent business use rule (80 percent for trucks) and the one entry for uninterrupted business use rule that the I.R.S. now proposes will be helpful, but not completely satisfying.

For non-farming rural employees there may be a substantial business purpose in allowing them to take their company car home. A small businessman in a small town who has a company car may have a sizeable area to cover. It makes less sense for him to come into a main office to get his assignment and his car than it does for his urban counterpart. This is because of the distances involved and also lack of alternative transportation in the rural communities (no buses, no commuter trains, no car pools, no subways) and it is simply not as easy for the rural dweller to get to his job.

Finally, it often suits the employer better to have his employees on the job on the road rather than reporting in the office. This is particularly true for public service professions where immediate response or visibility is an integral part of the job. Policemen in small towns serve the community by taking their cars home. Not only does it stretch available resources and provide increased police presence, but it also keeps the police on twenty four hour call to serve the taxpayers. In our view, they should not have to pay an additional amount for this service.

Again, I would like to thank the committee for taking up this issue. It is my hope that when these regulations are fully reviewed, we can find a solution that taxes everyone fairly without any undue influence on those who serve us so well.

CHATTANOOGA, TN, March 7, 1985.

MR. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
House Office Building, Washington, DC.

DEAR MR. DOWLEY: On behalf of the Small Business Council of America, Inc., we are submitting written comments on the recently enacted record keeping requirements for automobiles and certain other listed property and the Treasury's temporary and proposed regulations interpreting these record keeping requirements.

Although it is true that there have been income tax abuses in the form of personal use of business automobiles, our organization believes that the recent law changes and regulations thereunder represent a severe overreaction to those abuses which unnecessarily penalizes our members. In particular, our membership believes that the temporary regulations proposed by the Treasury Department are overly burdensome when applied to small businesses.

The small businessman, unlike executives of large corporations, must perform many mundane tasks in operating a business. This often includes being heavily involved in the accounting and record keeping function of the business. Since their resources are generally limited, increases in administrative paperwork impact small businesses directly and detract from their productivity. In this regard there are requirements in the proposed regulations which our membership find objectionable.

One is the requirement that mileage records must be contemporaneous. The majority of our members are presently so burdened with the management of business operations and time pressures involved in those operations that they do not have

time available to keep the detailed journal entries. By contrast the corporate executive may simply assign clerical personnel to keep the required automobile logs. The result is that the small businessmen will lose their tax deductions while their large competitors will be able to absorb the additional administrative burden. To impose these requirements on our membership forces them to choose between foregoing their legitimate tax deductions or giving up valuable productive time which will result in reduced incomes for their businesses.

The proposed regulations provide for special exceptions which eliminate or reduce the record keeping requirements. One exception is for taxpayers who use vehicles in their trade or business which are left at the business premises and receive only *de minimis* personal use. A second exception pertains to employees, who for valid business reasons are required to use their automobiles for commuting, if the employer accounts for commuting use by including an amount in the employees W-2 form.

Our membership's objection to these exceptions as a satisfactory solution is twofold. First, these provisions are inherently unfair in that they discriminate in favor of the wealthier taxpayers who are able to afford a second automobile for personal use and are allowed a 100% deduction for their business automobile. Secondly, they again place a significant record keeping burden on the small businessman providing automobiles for employees.

Under one exception it would be up to the employer to verify personal use of the automobiles, establish a value for that personal use, account for and accurately report these amounts both to the Federal government and to the employee. The alternative is to subject the employees to record keeping requirements which undermine their productivity. Again such reporting requirements are more easily handled by large businesses because they have the resources available in the form of computerization and clerical personnel necessary to cope with such regulations.

The proposed regulations also provide an exemption for sales and service taxpayers, who spend most of the normal business day using a vehicle. In a small business, the owner typically is involved in the sales and service of his product and seemingly should benefit from this exception. However, the proposed regulations state that this will not be available to taxpayers who normally spend most of their business day in an office or similar setting. Although this gives some relief to sales and service personnel, it does not help the business owner who must make frequent and often unexpected business calls. They would be forced into complying with the record keeping requirements during times when it would be most difficult for them to do so.

Our membership would also point out that mileage alone is not a complete criteria from which to judge the business use of an automobile. By using that standard, the regulations give no weight whatsoever to the necessity for businesses to have an automobile or similar vehicle available for use on a daily basis despite the fact that its actual business use would be less frequent. Certainly the depreciation in value resulting from age and obsolescence of the vehicle continues even when no actual miles are being driven.

Our membership appreciates the Treasury's desire to have an objective standard, be it arbitrary or not, which can be easily applied to taxpayers on a consistent basis. However, it is our membership's opinion that much of the perceived abuses stemmed from the lack of proper enforcement of the prior rules. Those rules, which allowed a deduction based in part on a subjective evaluation of the facts and circumstances at hand, provided a more equitable and less burdensome criteria for establishing the business use of automobiles and other vehicles. Furthermore, our membership believes that the original problem has been substantially reduced by the enactment of Code Section 280F regarding luxury automobiles.

In addition to the numerous economic and equitable reasons why this is bad legislation and should be repealed, there is also a moral issue involved. The maintenance of a daily journal which lists every business call, the reason for that call, the individuals involved, and by inference any other personal mileage driven, represents an unreasonable intrusion into the privacy of peoples lives. One of the alternatives proposed in keeping a record of all personal mileage driven is even more onerous. Certainly the submission of a reasonable calculation of business usage should be deemed sufficient documentation to justify a deduction for business automobiles.

In light of the above concerns about the legislation which has passed and the proposed regulations promulgated thereunder, we strongly urge that your Committee immediately initiate the retroactive repeal of section 274(d)(4) of the internal Revenue Code.

Very truly yours,

VICK SPEED,
J. ROBERT WHEAT, Jr.,
Counsels, Small Business Council of America, Inc.

STATEMENT OF HON. LARRY SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, the Deficit Reduction Act of 1984 requires taxpayers to substantiate any deduction or credit claimed with respect to automobiles or certain other vehicles by "adequate contemporaneous records."

To say that the "contemporaneous records" provision caused outrage in Florida, is an understatement. I have received a great deal of mail from different businessmen in opposition to this requirement. Common to all their letters is their concern about the waste of time and loss of money that would result from their having to keep a log book of daily trips.

An auto dealer, for example, says that the major difference between winners and losers is efficiency. These recordkeeping laws reduce the efficiency of every U.S. business and business person. One wonders who would win here.

Another man wrote that "with so much on a business man's mind, how can one concentrate on such a burdensome detail?" In assessing his employees, another says that his "employees are not good record keepers but excellent producers in the field."

Some businessmen complain that the law is unrealistic for their professions. A funeral director wondered why he would be required to take time to record time, date, mileage and purpose of trips for a hearse?

Inequities in the law have also been pointed out to me. As you know, truck drivers are not required to keep a log. Commenting on this fact, one salesman says that he makes his entire living from an automobile. "If I used a truck I wouldn't have to [keep a log] but can you imagine a professional sales person making successful calls in a truck?"

Finally, the Ft. Lauderdale Chamber of Commerce writes that "since businesses have never been able to take deductions for the personal use of their cars, we find it difficult to understand why the IRS needs more paperwork to verify what we can't do in the first place?"

Putting these problems aside, it does not seem to make sense to hire personnel to review these contemporaneous records, when they could be better used to collect delinquent taxes or to go after the billions lost each year through the underground economy.

The Chairman wonders what impact the January 25, 1985, modification by the IRS will have. As one businessman with four employees told me, "While I believe that a 75/25% ratio would be more suited to my particular situation, I will gladly accept the proposed 70/30% ratio in order to eliminate time-consuming recordkeeping. Now I can spend more time doing productive work, gross more income, net more profit and pay more tax on increased income, which should make the IRS happy."

This businessman may be happy, but I still believe that the recordkeeping requirement is onerous. That is why I cosponsored H.R. 531, to repeal the contemporaneous records requirement. I still believe, however, that business cars should not be used for personal reasons. If we are to provide businessmen with a deduction for business expenses, then those expenses must be related to business. The 1984 law was, in my estimation, a case of overkill.

STATEMENT OF ELAINE ACEVEDO, SOCIETY OF AMERICAN FLORISTS

The Society of American Florists is a trade association which represents the entire floral industry. The society has 8,000 members including growers, wholesalers, retailers and 144 floral industry trade associations whose membership comprises an additional 22,000 businesses.

The floral industry revolves around the effective transportation of floral products. The contemporaneous reporting requirements of the IRS would cause extreme hardship for many small floral industry businesses and impose burdensome costs and loss of efficiency on larger operations.

Growers of floral product use vehicles to deliver that product. They also use farm owned vehicles to run necessary and frequent business errands. Floral industry wholesalers use fleets of vehicles to deliver product in bulk, and their salesmen use vehicles to make sales calls. The retailer's business depends upon his ability to efficiently deliver the end product to the consumer.

Although the IRS recently revised its original requirements for universal contemporaneous reporting, the revisions are arbitrary and unfair and give the floral industry minimum relief. For example, the agricultural exemption would require growers to choose between keeping contemporaneous records or losing 30% to 20% of valid deductions. Charging their employees with 30% to 20% personal use is not a valid alternative since many agricultural workers are already at the bottom of the pay scale and cannot absorb the additional withholding burden. Yet recordkeeping is impossible for a grower with a short amount of time in which to harvest a perishable crop.

In addition, many floral industry growers own other related businesses and may not be able to elect not to keep records. It seems unfair to allow some growers to forgo the record keeping while requiring others to keep the records simply because they have other businesses. The nature of the farming operation is no different for either grower.

Floral industry wholesalers are relieved not to have to report contemporaneously on use of their refrigerated trucks. It is also helpful for those who have fleets of delivery vans which they keep on site, not to have to report each use of those. But often, these businesses do not have enough land to keep the vehicles on the premises when not in use and so the employees drive the vans home. These businesses would be stuck with the record keeping.

Wholesalers are also heavily dependent on their cadre of sales personnel who work primarily out of their autos making sales calls. The time they would spend record keeping for the IRS represents a substantial loss of sales and driving time resulting in a reduced business volume. SAF's wholesalers estimate that record keeping will cost about \$100.00 per year in salary time alone for each automobile they own. An average wholesaler in the floral industry owns about 5 automobiles and 25 trucks.

Retail florist shops are often small family businesses and can not use any of the alternative methods of record keeping in the latest IRS regulations. Any vehicles the shops own are usually used by the owner for personal as well as business reasons. Because retail businesses are small, they must be run efficiently to be profitable and anything that interferes with their efficiency could be a major threat. They don't have time to be daily record keepers for the IRS. There is little evidence that they have misreported their business mileage in the past. There is no reason they should be penalized without any evidence of misreporting.

Those tax payers who kept "adequate records" in the past will continue to do so. Those businessmen who cheated before will continue to do so "contemporaneously." It is no more unlikely that someone will claim undeserved business deductions twenty times a day than it is that he will do it once a week when he records his mileage.

In addition, any costs incurred because of the record keeping will be passed on to the customer. In the floral industry, growers will pass their costs on to wholesalers, who will pass their costs on to retailers, who will do the same to consumers. The smallest businesses in the floral industry, mostly retail businesses, will foot the bill for the costs of these requirements for the entire industry.

Members of the floral industry are already hard pressed to keep up with the daily demands of their businesses. Yet now they must interrupt their work repeatedly each day to log all business use of vehicles. SAF urges Congress to repeal the contemporaneous reporting requirements altogether and allow everyone to go back to keeping "adequate" records.

STATEMENT OF THE SOUTHERN CO.

The Southern Company is the parent firm of four electric utilities in the Southeast: Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (herein collectively referred to as the Southern electric system). The Southern electric system provides electricity directly and indirectly to over ten million people in the Southeast.

On October 19, 1984, the Treasury Department released for publication its temporary and proposed regulations relating to the recordkeeping requirements for automobiles and certain other property. These revised regulations would have required the Southern electric system to keep logs for about 6,800 vehicles. Entries into these logs would total approximately 68,000 per day. On February 15, 1985, the Treasury Department issued its revised temporary and proposed regulations relating to the recordkeeping requirements for automobiles and certain other property. These regulations reduce the number of vehicle logs for the Southern electric system from

6,800 to about 1,000. For the 1,000 vehicles for which logs are required, we estimate 10,000 entries per day. While we applaud the changes to the initial temporary and proposed regulations, further changes are necessary in order to reduce the still burdensome recordkeeping requirements and the administrative cost of maintaining such records.

Most of the 1,000 vehicles, for which daily logs are still required, are assigned to management personnel. These cars can be and are used for both personal and business purposes. Therefore, it is necessary to be able to identify personal and business use. However, this identification process can be accomplished without burdensome trip and daily log records. We suggest that an elective safe-harbour be provided whereby no trip and daily logs are required. The safe-harbour process could be patterned after the below example:

Example.—Assumption: (1) Management employee is assigned an automobile which can be used for both personal and business use.

(2) The employee spends most of the business day in his office.

(3) Total mileage driven during the year—20,000.

(4) Commuting distance between home and office is 10 miles each way or 20 miles round trip.

ELECTIVE SAFE-HARBOR CALCULATION

(Actual data), Step (1)—Total miles for year (read odometer at beginning and end of year)—20,000.

(Actual data), Step (2)—Calculate the total commuting miles (20 miles \times 220 workdays)—(4,400).

Step (3)—Subtract Step (2) from Step (1)—15,600.

(Assumed data), Step (4)—Business Portion—50%—7,800.

(Assumed data), Step (5)—Personal Portion—50%—7,800.

Step (6)—Total personal mileage; add Step (2) and Step (5)—12,200.

Step (7)—Personal use percentage; Divide Step (6) by Step (1) (12,000/20,000)—61%.

The above elective safe-harbour procedure would facilitate the identification process and would be equitable for both the employee and the Treasury Department. The above procedure embraces two key concepts. First, the commuting mileage is based on actual data which can be readily calculated. The only assumption relates to the number of days in the year for which the car was used for commuting. We assumed that the employee commuted each possible day; this would favor the Treasury Department. Second, mileage in excess of commuting mileage was assumed to be 50% for business and 50% for personal use. We feel that this is a reasonable split. Some taxpayers would benefit under this assumption whereas others would be adversely impacted. However, we feel that on average the 50-50 split would be appropriate and equitable for most taxpayers. An elective safe-harbour of this type would save taxpayers time and money while preserving the identification of deductible and non-deductible business expenses. From a verification standpoint, we feel that this safe-harbour procedure would save the Internal Revenue Service substantial time and money.

The revised regulations present a significant problem for about 1,100 of our "on call" employees. Many of the "on call" employees are technical personnel and drive specially designed vehicles with special tools and equipment. Others, however, are supervisory personnel and drive standard automobiles. The supervisory employees are required to respond to emergency situations along with the technical personnel in order to coordinate the activities of the technical employees. Vehicles used for "on call" purposes are restricted by company policy to only commuting and de minimus personal use. Because these employees are always on call and are, in fact, called out frequently, all uses of such vehicles, including commuting, should be considered business use. In many instances, these employees could use alternatives means of transportation which would be less than \$3 per day if they were not "on call". To treat the commuting portion of the use of such vehicles as personal would not be appropriate or equitable.

In view of the confusion concerning the implementation of the new automobile rules, the immediate solution would be to repeal the law, thereby allowing time for a thorough analysis by Congress with the result that a more equitable and more easily administered law could be enacted.

We appreciate the opportunity to comment on the Treasury Department's revised temporary and proposed regulations relating to recordkeeping for automobiles and certain other property.

STATEMENT OF HON. ARLAN STANGELAND, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MINNESOTA

Mr. Chairman, I want to thank you for allowing me to come before your Committee and testify today in support of H.R. 600, a bill which I co-sponsored and which will repeal the provision of the Tax Code which establishes contemporaneous records of the accounting standards for legitimate business deductions.

First, Mr. Chairman let me review, as I see it, the brief history of this legislation. I, quite frankly, did not particularly like what I heard when we passed this measure during the last session.

I understood and supported the attempts of this Committee to ferret out tax loopholes and then eliminate these loopholes.

I feel certain, Mr. Chairman, that there is much mischief being performed by certain business organizations and individuals who are using auto expenses and business tax exemptions in such a way that is giving them an unfair windfall, and these practices should certainly be stopped.

I also believe, Mr. Chairman, that a majority of the Members of Congress believed that these were the kind of activities Congress was aiming at when it voted for this legislation.

But Mr. Chairman, no one expected the first set of regulations put out by the Internal Revenue Service. It appears to me that a great majority of the Members of Congress opposed these unfair regulations.

These regulations, Mr. Speaker, punished the farmer and the small businessman. It forced farmers to log every mile on all their farm vehicles.

Some of my constituents were logging trips from one barn to another. We all know what happened, then. Members of Congress were swamped with mail from throughout the country opposing these regulations.

The IRS then realized that some changes had to be made in order for them to save this section of the law. They recently, last February 20, issued new regulations. If we would have seen these regulations prior to examining the first, Members of Congress would have been up in arms.

However, compared to the first set, these regs seemed fairly harmless, but they are not.

Representing a large rural constituency, Mr. Chairman, I can truthfully say that these new regs will put an unfair burden on the farmer and the small businessman.

Let's first look at the farmer. These new regulations say that farmers who receive more than 70 percent of their income from farming may either:

1. Keep contemporaneous records of personal use of "road vehicles" or
2. Keep no records and write off 80 percent of the use of a truck or 70 percent of the use of an automobile.

The easy way out is to not keep records and receive the 70 or 80 percent deduction. But this is not fair to the farmer. The farmer is revolting against efforts to turn him into a paper pusher.

These regulations are a repulsive intrusion into everyday life and a total mockery of the Paperwork Reduction Act.

Congress has promised the American citizens that we would reduce the amount of Federal paperwork—not increase it.

It is most difficult for farm families to keep accurate logs. Farming is not only their business, but their personal life and their personal trips normally are not personal at all, as we know it, but these trips are practically all connected in some way or another with their life on the farm.

I foresee pages and pages in the tax code defining what is "personal" and what is not "personal." Farm life is not like any other occupation. Everything you do goes to keep up the farm.

It appears as if the IRS is geared to use "contemporaneous records" as part of our taxpaying vocabulary. I am asking this committee to repeal this law and eliminate the words "contemporaneous records" from the farmer's vocabulary.

There are a number of things that strike me wrong about this bill. First, the Administration is asking that we pass a Tax Simplification Law. A law which would make it much easier to perform our yearly duty of filling out our taxes. While Congress is doing this, the IRS is asking us to make our tax code more complicated and filling the pages of the code with more rules and regulations that will do nothing but clutter up the code.

Another thing that worries me is that this has all the earmarks of a foot-in-the-door approach. The IRS has already issued two different sets of regulations on this in a short period of time. Will we spend the next few months waiting for another set

of regulations? The safe way out for all of us is to repeal this section of the law. Let us operate as we have in the past.

Quickly let us take a look at the new regs as they effect the business community.

Sales and Service personnel who spend most of a normal business day using a vehicle to call on customers, make deliveries or visit job sites may either:

1. Keep contemporaneous records of personal use of vehicles or:
2. Keep no records and write off 70 percent of the use of a personal type vehicle, or 80 percent of the use of a commercial type vehicle.

It's certainly difficult for me to believe that many plumbers would use their truck, filled with plumbing equipment for personal use. It appears that not too many delivery trucks would be the type of vehicles one would use to take a vacation. Mr. Chairman, let's simplify our laws, not complicate them. Let us remove Federal paperwork from our citizens, not create more. Let's pass H.R. 600 and get rid of a bad plan.

Thank you once more for giving me this opportunity to testify before your Committee.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 25, 1985.

HON. DAN ROSTENKOWSKI,
*Chairman, House Ways and Means Committee, Longworth House Office Building,
Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed, please find a copy of a log provided to me by one of my constituents. This log was kept in order to comply with the contemporaneous record keeping provision of the Deficit Reduction Act of 1984.

This log vividly demonstrates how cumbersome and time-consuming the log record keeping requirement is. I would appreciate your taking this information into account during the Ways and Means Committee's deliberations on revision of Section 179b of the Deficit Reduction Act.

With best regards, I am
Sincerely,

ROBIN TALLON,
Member of Congress.

Enclosure.

SOUTHEASTERN STEEL COMPANY

MILEAGE LOG

Vehicle ID FORD (MAINT.) PICKUP EZK 161 4052K

ite	Driver	Odometer Start	Destination	Odometer Stop
1-85	ZACK	59348	STOKES OIL CO.	59362
3-85	"	59362	CAM-BAR SMOX	59366
1-85	Dennis	59366	Lumberton	59486
7-85	"	59486	"	59596
7-85	Zack	59596	CAM-BAR	59601
10-85	"	59601	Flo. Elect SOLAR	59607
10-85	"	59607	Bearing Dist.	59615
1-85	Dennis	59615	Lumberton	59725
14-85	"	59725	"	59845
5-85	"	59845	CAM-BAR Elect	59952
6-85	ZACK	59852	NOLAND CO. M.E. WILKINS HOUSE	59862
7-85	"	59862	NATIONAL HARD.	59867
1-85	HARLEY Smiley	59867	Yaroborough H Auto	59873
2-85	SAM B. Truck Driver	59891	HARTSVILLE - ³⁰⁰⁰⁰	59943
24-85	Ed. Baynet	59944	FAC. Insp. Supply City Ice & Fuel	59956
4-85	"	59956	SMOX	59964
5-85	D. TURACK	59964	SCOTFIELD	59975
9-85	"	59975	SCOTFIELD	59986
0-85	"	59986	BFB Hydropolics	59998
31-85	"	59998	"	60010
1-85	"	60010	"	60022

SOUTHEASTERN STEEL COMPANY

MILEAGE LOG

Vehicle ID 84 Dodge Pickup P116120

Date	Driver	Odometer Start	Destination	Odometer Stop
-85	GT	8945	Greyhound	8952
-85	mm	8969	10 th LAW/McKnight	
-85	gch	9031	NATIONAL WELDERS	9030
-85	mm	9054	Holmes	9040
-85	A.H.	9114	Dillon	9114
-85	TW	9126	YMCA (FLORECE)	9126
-85	TW	9150	The Florence hotel (Florence Industries)	9150
-85	mm	9166	Bingo Truck Stop	9166
-85	mm	9177	Pickwillie up.	9177
-85	mm	9190	Pickwillie up	9190
-85	RB	9206	SOUTHEASTERN FREIGHT	9206
-85	RB	9228	Pickwillie up	9215
-85	Pug	9240	Pickwillie up	9240
-85	Soy	9251	SCHOFIELD AND NATIONAL HARDWARE	9251
-85	EDM	9254	BIRD CRYER	9254
-85	EDM	9255	McLIVAC SC	9254-7
-85	EDM	9263	shop	9263
-85	EDM	9271	ENTERPRISE TRUCK SERVICES	9272
-85	EDM	9279	ENTERPRISE TRUCK SERVICES	9276
-85	EDM	9291	OR	9291
-85	EDM	9300	Damage	9300
-85	EDM	9408	Damage	9408
-85	EDM	9425	Damage	9425
-85	EDM	9434	Damage	9434
-85	EDM	9442	Damage	9442
-85	EDM	9442	Dillon	9442

(Dorcas's office)

SOUTHERN STEEL COMPANY

MILEAGE LOG

Vehicle ID 84 FORD ESCORT ODZ 429

Date	Driver	Odometer Start	Destination	Odometer Stop
-85	Kathy Pilkam	5984.6	Post Office	5992.1
-85	Kathy Pilkam	5992.1	Post Office	5999.7
1-85	Kathy Pilkam	5999.7	Post Office	6007.3
-85	Kathy Pilkam	6007.3	Post Office	6020.3
-85	Kathy Pilkam	6020.3	Post Office	6027.9
-85	SCOTT MUNN	6027.9	Cameron + Berkeley	6030.8
-85	Kathy Pilkam	6030.8	Post Office	6038.4
-85	SCOTT MUNN	6038.4	Company BUSINESS	6074.1
-85	SCOTT MUNN	6074.1	M+M BLUEPRINT	6083.5
-85	Kathy Pilkam	6083.5	Post Office	6091.1
-85	Kathy Pilkam	6091.1	Post Office	6098.7
-85	TIM WAGE	6098.7	GROCERY (LUNCH)	6109.4
-85	TIM WAGE	6109.4	Post Office	6112.0
-85	TIM WAGE	6112.0	"THE Florence Motel" 911F-84 I-95 Hwy 52	6125.4
-85	Kathy Pilkam	6125.4	Post Office	6131.9
-85	TIM WAGE	6131.9	"THE Florence Motel" 911F-84	6145.4
-85	TIM WAGE	6145.4	Post Office	6152.0
-85	TIM WAGE	6152.0	SUMMIT DOWNS SF 85 SUMMIT S.C.	6239.6
-85	Kathy Pilkam	6239.6	Post Office	6247.2
-85	SCOTT MUNN	6247.2	MERRITT HAYLAND	6261.3
-85	SCOTT MUNN	6261.3	CAMERON + BERKELEY	6265.8
-85	SCOTT MUNN	6265.8	BUS STATION	6273.3
-85	Kathy Pilkam	6273.3	Post Office	6280.8
-85	TIM WAGE	6280.8	"THE Florence Motel" 911F-84	6293.1
-85	Kathy Pilkam	6293.1	Post Office (Hwy 52)	6306.6

MILEAGE LOG

Vehicle ID 84 Ford Escort

ite	Driver	Odometer Start	Destination	Odometer Stop
7-85	Kathy Pelham	6327.4	Post Office	6329.9
22-85	Wendy Carney	6330	Renco - Piggly Wiggly	6338.8
2-85	SCOTT MUNN	6338.3	BUS STATION	6346.5
3-85	Wendy Carney	6346.5	Post Office	6354
23-85	SCOTT MUNN	6354	BUS STATION ^{UPS}	6365.2
3-85	SCOTT MUNN	6365.2	Bank INN ^{TOP}	6375.2
4-85	Wendy Carney	6375.2	Post Office	6382.7
5-85	Kathy Pelham	6382.7	Post Office	6390.3
6-85	TIM WOOD	6390.3	11TH & PULVER MOUNTAIN ⁶⁶ 911F-88 & VULCRAFT	6404.2
7-85	RUDY BERRY	6404.2	LUMBERTON PLANT	6512.0
8-85	Kathy Pelham	6512.0	Post Office	6519.5
9-85	SCOTT MUNN	6519.5	BUS STATION + M+M	6528.0
10-85	Kathy Pelham	6528.0	Post Office	6535.6
11-85	SCOTT MUNN	6535.6	Post Office	6543.1
12-85	SCOTT MUNN	6543.1	STANFORD PARK SUNOX, CITY JEEP FUEL	6553.7
13-85	Kathy Pelham	6553.7	Post Office	6561.3
14-85	TIM WOOD	6561.3	SHAW - WALKER	6574.2
15-85	Kathy Pelham	6574.2	Bank	6581.1
16-85	Kathy Pelham	6581.1	Post Office Johnston Jt West	6589.8

TEACHING SYSTEMS, INC.,
Dallas, TX, February 13, 1985.

Congressman MARTIN FROST,
Longworth Building,
Washington, DC.

DEAR MARTIN: The latest raid by the IRS on the business community is excessive, abusive and beyond all reason. The new record keeping rules for logging mileage for outside salesmen and for company vehicles is ridiculous.

For years the steadily increasing ugliness of the IRS attitude towards U.S. Citizens has been damaging the American tradition of voluntary compliance.

The Congress should have a tough watchdog committee to keep this autocratic bureau within the bounds of fairness.

Sincerely,

JAMES C. CROW.

VILLA PARK, CA, February 19, 1985.

Mr. JOSEPH K. DOWLEY,
Chief Counsel, Committee on Way and Means, House of Representatives, Longworth
Office Building, Washington, DC.

DEAR MR. DOWLEY: Besides having to work to May of each year for the benefit of the federal government, as a business and a C.P.A. for many other businesses, we still find ourselves burdened down with government regulations.

The proposed regulations add (not reduce) a new level of unproductive paperwork for businessmen and their staffs. So it brings in a few extra dollars for the federal government to spend. Big deal! Americans are not interested in giving the federal government more money. We are interested in the federal government taking less money from us and getting "off our backs." How many times must President Reagan and the American people tell you to close shop and go fishing. We can get along as a nation without your running our lives!

This letter will even be a waste of time. In Proverbs, King Solomon instructed us to be slow to give advice. He said, "The wise don't need it and the fools won't listen". Oh well, another taxpayer again tried.

Very truly yours,

NICHOLAS TERPSTRA.

STATEMENT OF THE TEXAS CATTLE FEEDERS ASSOCIATION

The Texas Cattle Feeders Association appreciates the opportunity to present its views on the issue of "contemporaneous" record keeping. We wish to address our concern to the regulations promulgated in Internal Revenue Code, Section 280F which attempt to implement Section 179(b) of the Deficit Reduction Act of 1984.

The Texas Cattle Feeders Association represents most of the cattle feeders in Texas, Oklahoma and New Mexico, an area that in 1984 marketed over 5 million head—approximately 25 percent of all the fed cattle in the United States.

We feel that the record keeping requirements for automobiles and trucks are burdensome and in many situations will have the unfortunate result of denying legitimate business deductions. Cattle feeders and ranchers are concerned and confused about the IRS regulations that require "contemporaneous" records and daily logs of business/personal use of company-owned vehicles. We are concerned, because this would be a real burden—if not an impossibility—for employees who are not accustomed to keeping records, who don't even carry a pencil and some of whom can hardly read or write. Many of the vehicles driven by our members and their employees are used more than 80 percent of the time for work-related purposes. These vehicles often are used several times daily by different operators to conduct business.

The interpretation of "contemporaneous" record keeping to mean the maintenance of a daily log or journal of all business uses goes beyond what is fair and reasonable to justify deductions. We feel that in view of the mandate specifically provided in the Paperwork Reduction Act, any regulatory effort in this area is inconsistent and onerous at best. These effort will fail to significantly reduce any abuses existing under present guidelines and may well prove a further disincentive for compliance in a broad number of areas. We strongly believe that the paperwork burden created by this provision will be counterproductive. Failure of an individual

to record a business trip may also cause that taxpayer to forgo a legal deduction to which he would otherwise be entitled.

Congressional hearings held earlier this year substantiate the belief that the IRS has clearly gone too far in their interpretation of congressional intent for these requirements. Although the IRS claims to have documented massive abuse, it should be noted that they ignored repeated congressional requests during development of the legislation to reveal the evidence of "widespread abuses." Any evidence finally supplied at this late date would seem to us to be somewhat suspect.

We are not satisfied, to any degree, that the modifications of the regulations recently published by the Treasury Department will remedy our primary concerns of excessive paperwork. The modified regulations fail to resolve the difficulties generated by these provisions. They simply carve out narrow exceptions to the requirements and in some cases further confuse the issue.

We feel that nothing short of repeal of the "contemporaneous" record keeping requirements will be sufficient to resolve the practical problems created by Section 179(b). We urge a return to the pre-1985 language requiring "adequate" records.

TEXAS MOTOR TRANSPORTATION ASSOCIATION,
Austin, TX, March 1, 1985.

HON. MARTIN FROST,
Longworth House Office Building,
Washington, DC.

DEAR MARTIN: I appreciate ever so much your responding to my earlier letter regarding the IRS regulations governing record keeping for business use of automobiles. I am pleased to know that there will be hearings on March 5 before the Ways and Means Committee and would like you to have some additional information that has occurred since I have been by your office earlier this month.

The American Trucking Associations and the Texas Motor Transportation Association, at my urging, through their respective governing bodies have both gone unanimously on record asking for a total repeal of all of the new language placed in the code last year on the use of business vehicles. The record keeping is an arduous burden and must be eliminated. Additionally, IRS should not be able to dictate what the value of the use of a personal car is to a business. Our association requires its employees to reimburse us for any personal use which includes the commuting back and forth from home. The new proposed IRS modifications only deal with recording business miles and do not go to the other changes made. Even so, their modifications on recording mileage are far inadequate to solve the problem. In the meantime, business people everywhere are either keeping some sort of records or trusting that Congress will somehow save us from over zealous IRS agents. I am doing both!

Thank you very much for your assistance and please continue the fight. Otherwise, we are going to end up with something that neither your constituency, the truck and bus industry, the business community nor the Congress can live with. To paraphrase a quote from the movie a few years ago, "Your constituents are mad as Hell over this and they are not going to take it any more!"

Thank you very much and kindest personal regards.

Sincerely yours,

TERRY TOWNSEND, CAE.

TOWING & RECOVERY ASSOCIATION OF AMERICA, INC.,
Winter Park, FL, March 5, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington,
DC.

DEAR MR. ROSTENKOWSKI: Towing and Recovery Association of America, Inc., on behalf of the nation's tow truck operators, is opposed to any and all contemporaneous recordkeeping requirements enacted as part of the Tax Reform Act of 1984.

The tow truck industry is predominantly comprised of small, family-owned and operated businesses. Engaged in the business of towing and/or recovering wrecked and disabled vehicles, the principal business equipment is the tow truck or wrecker. Tow trucks generally range in size from an unloaded weight of 7,000 pounds up to 35,000 pounds, with respective Gross Vehicle Weights (GVW) of 10,000 GVW up to approximately 50,000 GVW, the larger units utilized exclusively for towing tractor-trailer trucks and clearly not susceptible to personal use.

With regard to the contemporaneous recordkeeping requirements, the primary concern of the towing industry is in the treatment of the smaller tow trucks which are used in the transportation of disabled passenger automobiles. Under the current tax code and regulations, these vehicles may be construed as being "susceptible to personal use".

In the normal course of business, the vast majority of small tow trucks are driven by employees during the employee's regular working hours, responding to various towing service calls during the day. Tow trucks are normally radio dispatched so that, upon the completion of one tow call, another call may immediately follow. At the end of the employee's work shift, the tow truck is generally returned to the employee's principal place of business and either parked until the next working day or operated by another employee during the following work shift.

Personal use of a tow truck is, of course, possible. While a light-duty tow truck is a specialized piece of equipment, it is still mobile enough to transport the driver to personal destinations, such as lunch or personal errands. Also, due to the emergency nature of the tow truck industry and the usually small number of employees at towing companies, it is not uncommon for either employers or employees to drive tow trucks home at night. The owner or driver remains 'on call' all night should a tow truck be needed. Clearly such a practice should not be deemed "personal use".

Prior to enactment of the recordkeeping requirements, Towing and Recovery Association of America has never had any purpose in surveying the amount of personal tow truck use relative to business use, however practical observation leads to the conclusion that personal use is comparatively minute.

Although the temporary income tax regulations relating to the requirements of § 274(d)(4)[50 F.R. 7058] alleviated some of the uncertainty of the recordkeeping requirements as it relates to tow trucks, the rule is still inherently onerous and ambiguous.

In light of the minimal personal use of tow trucks and the uniqueness of their use due to the emergency nature of the towing industry, it is the position of Towing and Recovery Association of America that any additional tax revenues which might be generated as a result of the recordkeeping requirement are far outweighed by the extreme clerical hardship placed upon tow operators throughout the United States.

We respectfully submit that the recordkeeping requirements of IRC § 274(d)(4) should be repealed.

Very truly yours,

MICHAEL P. MCGOVERN,
Executive Director, on behalf of the T.R.A.A. Board of Directors.

UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES
OF THE PLUMBING & PIPE FITTING INDUSTRY,
Washington, DC, March 7, 1985.

Hon. DAN ROSTENKOWSKI,
Chairman, House Ways and Means Committee, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As general president of the 350,000 member United Association of Plumbers and Pipefitters (AFL-CIO), I want to submit this letter to your committee and request that it be made part of the printed record in connection with your March 5, 1985 hearing.

Many thousands of our members, in communities across the nation are facing sharp increases in their income taxes if the proposed Internal Revenue Service regulations regarding section 179(b) of the Tax Reform Act of 1984 are implemented.

I am referring to those members who, as a part of doing business, are required to drive service vehicles home at the close of work and back the next day to a job-site, to a customer, to the shop or wherever they are required to go.

Let me assure you that our members do not consider this long-established business practice to be a "fringe benefit". On the contrary, it is an integral part of their work responsibilities. The company-owned vehicles must be in the service mechanic's possession if the firm is to be able to respond to emergency calls in off-hours and to arrive in a timely fashion at the next day's assignment.

Many of our 448 local unions in the United States have reported to us that their members are outraged by this impending tax increase and will insist on the option to refuse to take their company-owned vehicles home in the evening.

Clearly, this situation is threatening to raise havoc in the mechanical service industries. And the ultimate losers will be the consuming public.

For these reasons, the United Association commends your committee for taking the initiative and holding hearings on this matter. We want to go on record in full support of legislation to repeal section 179(b) of the Tax Reform Act of 1984.

We believe that even under the 1984 bill IRS has the power to exclude these service vehicles from the regulations on the grounds that such use by our members is clearly not personal in nature. While we acknowledge that the modifications recently announced by IRS would ease the impact of the regulations on service vehicles, we will continue our efforts to persuade IRS to specifically exclude service vehicles in its final regulations.

If, however, IRS insists that Congress intended to tax such use of service vehicles along with luxury automobiles, we can only turn to your committee and to Congress for relief from the imposition of this onerous and transparently unfair burden on our members and their families.

We know that the 1984 law was an honest effort to ensure that truly personal use of company owned-vehicles—especially luxury automobiles—was properly reported for income tax purposes. We have no quarrel with that objective.

But, we agree with many of your colleagues who are supporting repeal legislation because the 1984 law, as interpreted by IRS, is impacting on businesses, working people and the public in ways never contemplated or intended by Congress.

Whatever action your committee takes, now or in the future, we earnestly request that the special circumstances of the service and construction repair industries be fully recognized and that adequate provision be made to protect our members from any unintended consequences of such legislation.

Sincerely yours,

MARVIN J. BOEDE,
General President.

VF CORP.,
Wyomissing, PA, March 25, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
House Office Building, Washington, DC.

DEAR MR. DOWLEY: The provisions of the 1984 Tax Reform Act, imposing onerous, mandatory record-keeping and withholding requirements on the personal use of company furnished automobiles, have evoked considerable controversy and discussion.

The regulations promulgated to date have not reflected all possible methods of accounting for this personal use. They have focused only on withholding for personal use using daily or annual rental values as the basis for withholding.

Some corporations, including ours, have been treating the cost of the personal use as a non-allowable deduction on the corporate return. The cost of the personal use is computed by using the personal miles times \$.205/mile.

The return to Treasury is approximately the same, under this method, as it is under the withholding method, since most of the affected employees have effective tax rates in the 25 to 30% range.

We believe that use of the corporate disallowance is simple, direct and easily administered and should be a permissible method of accounting for the personal use of a company car.

We ask that you include this method in your consideration of this issue.

Very truly yours,

J.M. WIGGINS,
Vice President, Finance.

STATEMENT OF HON. HAROLD VOLKMER, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF MISSOURI

Mr. Chairman and members of the Committee, I appreciate the opportunity to offer my views to the Committee on the recent controversy surrounding the regulations for "contemporaneous" recordkeeping promulgated by the Internal Revenue Service last October, and recently modified.

Like many others in the House, I am now being flooded by letters from angry constituents demanding repeal. Farmers ask me if they actually have to write down every time they drive their pickup truck to the barn. Businessmen complain that it is ridiculous for their people to record every move they make and costs more in lost

time than will ever be gained in additional revenue. I must question what possible use the IRS will ever be able to make of all of the paper that will be generated by this requirement. Either every businessman will be required to submit his records with his tax return, overwhelming the Service, or we will make the majority of the American people even more cynical about the tax system, because they must fill out a long record that no one will ever see unless they happen to be among the random few selected for audit.

In response, I have joined Congressman Anthony and Congressman Roemer on their bills to repeal these onerous requirements. I am glad to see that the IRS has now realized the folly it produced in the first draft of these regulations and has issued a modified version. If nothing else, the change in the form of record required is welcome and should be preserved in the final rule. Still, I believe that it is not the place of the IRS to demand that a businessman account for every minute of his time while engaged in his work. This is far beyond the latitude we should permit any government agency.

As I understand the situation, the Committee was attempting with this portion of the Deficit Reduction Act to end the practice whereby luxury automobiles were purchased and then depreciated as business vehicles using the Accelerated Cost Recovery Schedule (ACRS) and Investment Tax Credit (ITC) provided by the Economic Recovery Tax Act of 1981. The recordkeeping requirement was added as a means of assuring that such cars were indeed being used for business purposes. I fully support the Committee in this attempt. I am displeased with the various frivolous uses to which these credits may be put, thereby depriving the Treasury of much-needed revenue and contributing to the perception that certain people can avoid their fair contribution to our society.

Therefore, I would like to propose an alternate means for substantiating business use. I recommend that the law be amended to restore the original requirements, as described by 26 USC Section 274(d) prior to the enactment of the Deficit Reduction Act, except in the case where a taxpayer files forms 3468 (for the ITC credit) and 4562 (for ACRS deductions) on the purchase of a passenger automobile whose price exceeds some threshold marking it a luxury automobile, and at the same time files form 2106 (business expense deductions) to claim deductions for business expenses in connection with the operation of that vehicle. Form 2106 should then be modified to require that the taxpayer sign a statement attesting to the fact that he had kept a detailed statement of business use. The IRS could then program its computer systems to flag returns submitting all three forms simultaneously for further attention. When audited, the taxpayer would be required to produce the record.

This seems to fit the Committee's expressed purpose while at the same time lifting the burden of recordkeeping from most taxpayers. Those contemplating continued abuse of this provision in the law would find that the time spent in keeping the detailed record required would more than offset the benefit gained. I hope that this will prove useful to you in your efforts to better target the time of the IRS on those people now carrying on this practice, without tarring all taxpayers guilty by association.

MARVIN WALDRIP REALTY Co.,
Marietta, GA, March 1, 1985.

JOSEPH K. DOWLEY,
Chief Counsel, Committee on Ways and Means, House of Representatives, Longworth
Office Building, Washington, DC.

DEAR MR. DOWLEY: I am writing this letter to you in regards to the new IRS tax law concerning auto recordkeeping rules.

American businesses need relief from these unprecedented burdens and we cannot bear this additional burden of doing business. This papergenerating provision is presently interfering with normal business operations.

I do not object to fair taxation, but I do object strongly to excessive and unnecessary recordkeeping requirements.

Sincerely,

M.C. WALDRIP, President.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 13, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I received your letter and am glad to know that hearings on the "adequate contemporaneous records" requirement have been scheduled.

As you pointed out, the original burdensome rule has caused a great deal of difficulty and hardships for our small businesses as well as some individuals.

Although our Appropriations schedule will prevent me from testifying, it is my view that we do not need to increase red tape. Maybe we should think about a process of establishing proper limits, perhaps based on size, volume, etc.—then require records if a business or individual exceeds that. Such a course has worked well in several other areas.

Thank you for your kind consideration.

Sincerely,

JAMIE L. WHITTEN,
Member of Congress.

HUNTSVILLE, AL, February 5, 1985.

MR. JOSEPH DOWLEY,
Chief Counsel, House of Representatives, Ways and Means Committee.

DEAR SIR: I strongly urge the elimination of the law requiring time logs for use of business autos. If we could return to the old system of business auto deductions I will have more time to see the older patients in my practice that need my time instead of filling log books.

Sincerely,

JACK WILSON, M.D.

P.S.—I do support the fee freeze on M.D.'s for Medicare. I think this is needed to help control the budget deficit.

U.S. SENATE,
Washington, DC, March 5, 1985.

HON. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I would like to submit the following written statement into the Committee's hearing on the regulations pertaining to recordkeeping for business vehicles:

First, I want to thank the Committee for extending to me, a member of the "other body," the opportunity to relate to you how Nebraskans from all over my state have been affected by these new recordkeeping rules from the Internal Revenue Service.

Like all of you, I have heard from hundreds of constituents. Their message is as clear as it is consistent. The demand that these new rules be rescinded. They protest the time-consuming burden that has been imposed. And, they blame Congress as the originator of their problem and look to Congress to act and to act quickly to provide the solution.

I do not think that their blame is misplaced.

Quick action is something that Congress is not well known for. But in a crisis, we can act quickly, as we have done so many times in the past. Last week, both Houses of Congress acted quickly and responsibly to pass a farm credit relief bill to aid our farmers who face financial ruin. In the Senate, I was pleased to see my amendment supported by so many of my colleagues from both sides of the aisle. You members of the House of Representatives acted even faster to pass a relief bill of your own.

The IRS' recordkeeping rules constitute another kind of crisis that is no less urgent than the need for farm credit relief. Businesses, large and small, cannot afford these unnecessary and burdensome regulations which the IRS has imposed through its interpretation of the Deficit Reduction Act of 1984.

I can tell you that support for repeal in the Senate is widespread and bipartisan. Nearly half the senate, or 49 members, have cosponsored S. 260, a bill introduced by Senator Heinz. S. 260 repeals these regulations and returns the situation to the way it was before Congress passed the Deficit Reduction Act last fall.

Mr. Chairman, I think that a sampling of some of the letters I have received from all over Nebraska will point out clearly how important it is for all of us in Congress to act promptly:

From Hastings, NE.: "My wife and I are very much opposed to the so-called mileage log that somehow was put into law. It is ridiculous and absurd. If a farmer goes according to the law, at the end of a year, he'll have a book a foot thick."

From Beatrice, NE.: "All of us certainly do not object to fair taxation, but we all do object strongly to excessive and unnecessary recordkeeping requirements."

From Broken Bow, NE.: "It is the greatest waste of productive time that has ever been put upon us . . . The competitive world does not leave time for such trivia."

From Omaha, NE.: "I thought that the trend was toward less government intervention in people's lives, and now this! . . . Why doesn't the government come up with ways to save money and reduce the deficit, instead of constantly wasting our money and now, our time, too?"

Mr. Chairman, I could quote from many, many more, but I think the point is clear.

Thank you for allowing me the chance to offer my views. I encourage all of you to act promptly to bring this issue to a satisfactory resolution, and you have my pledge that I will work toward the same end in the Senate.

EDWARD ZORINSKY,
U.S. Senator.

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